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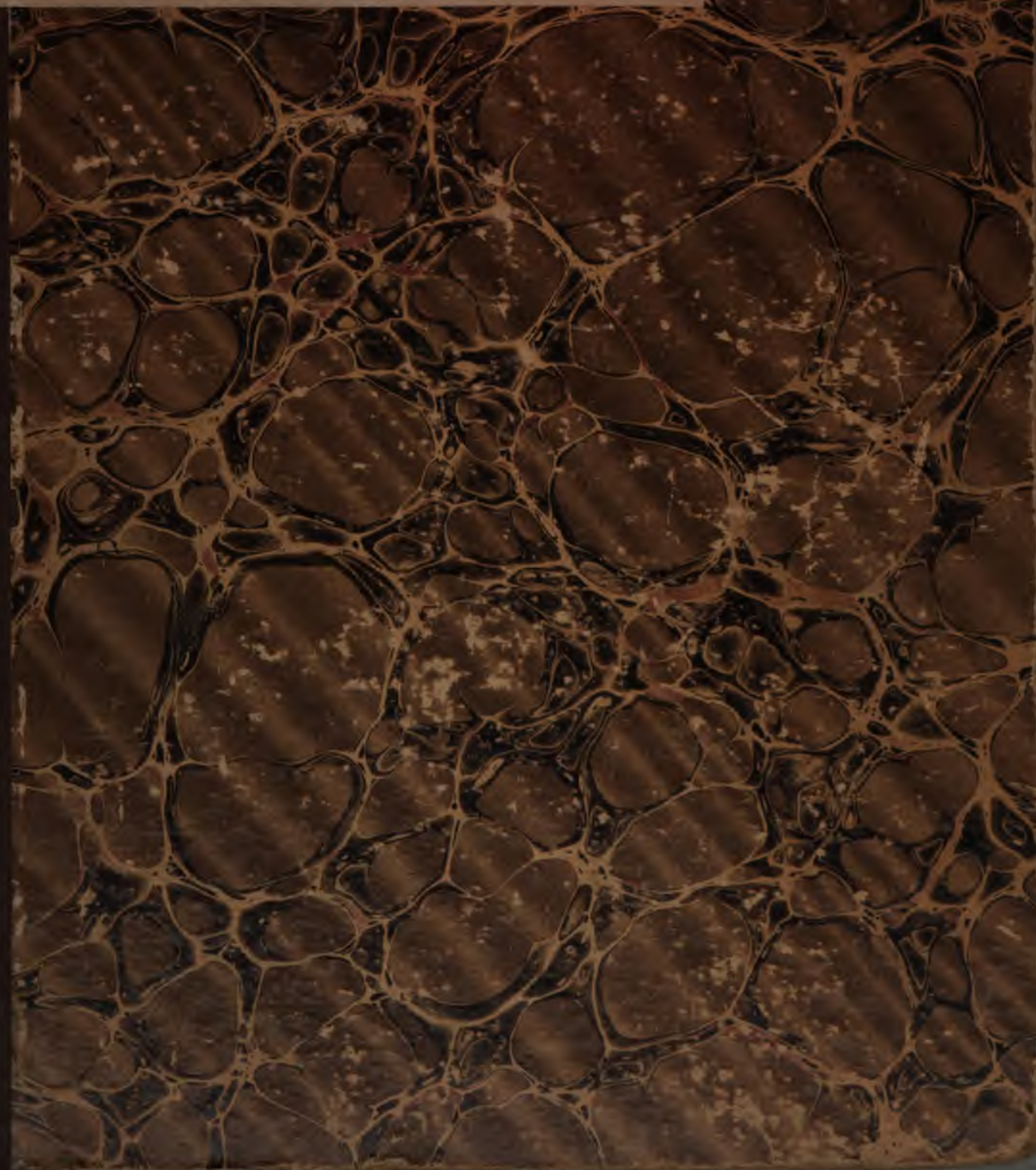
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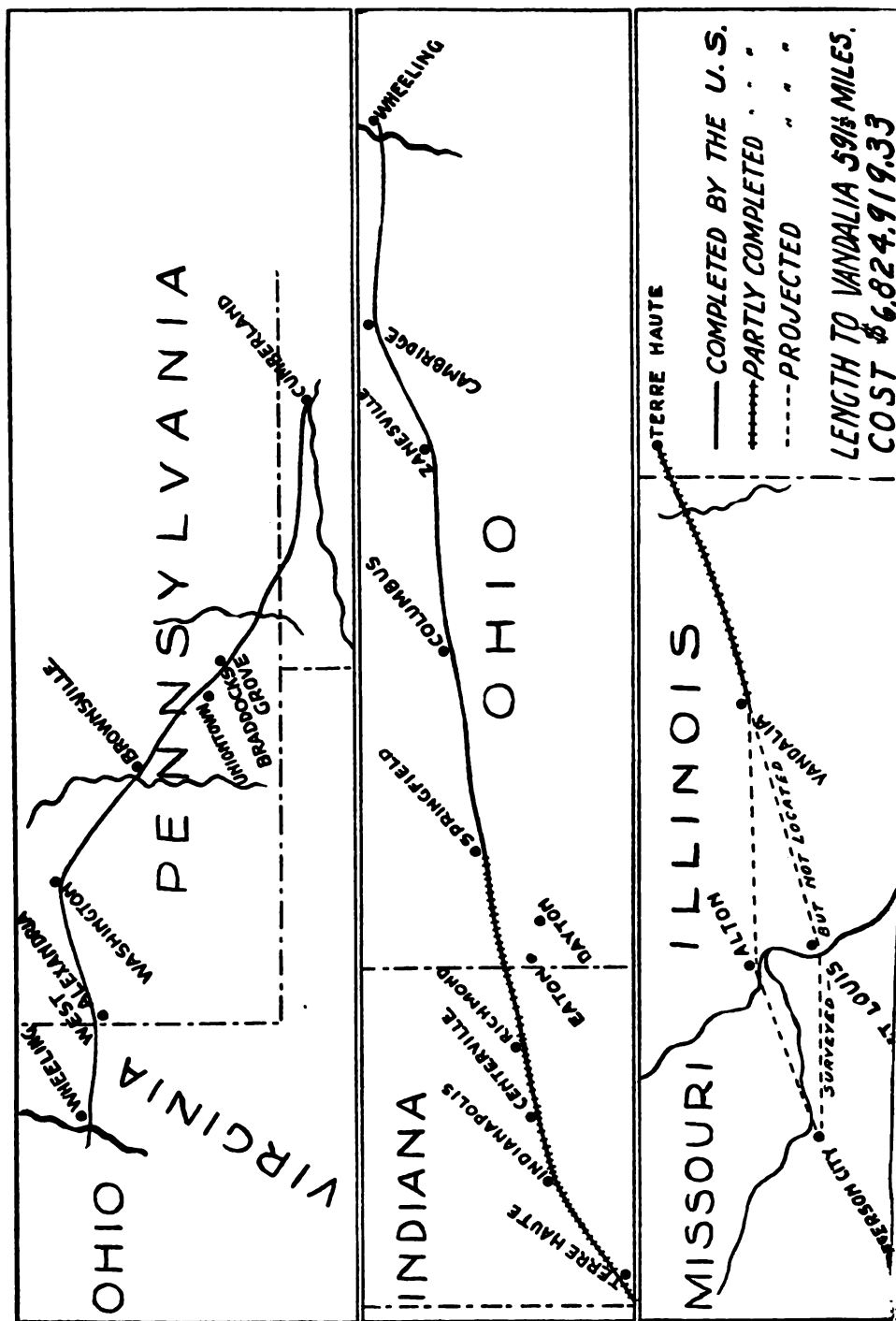
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Political and constitutional study of the
Cumberland road.





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A POLITICAL AND CONSTITUTIONAL STUDY OF THE CUMBERLAND ROAD

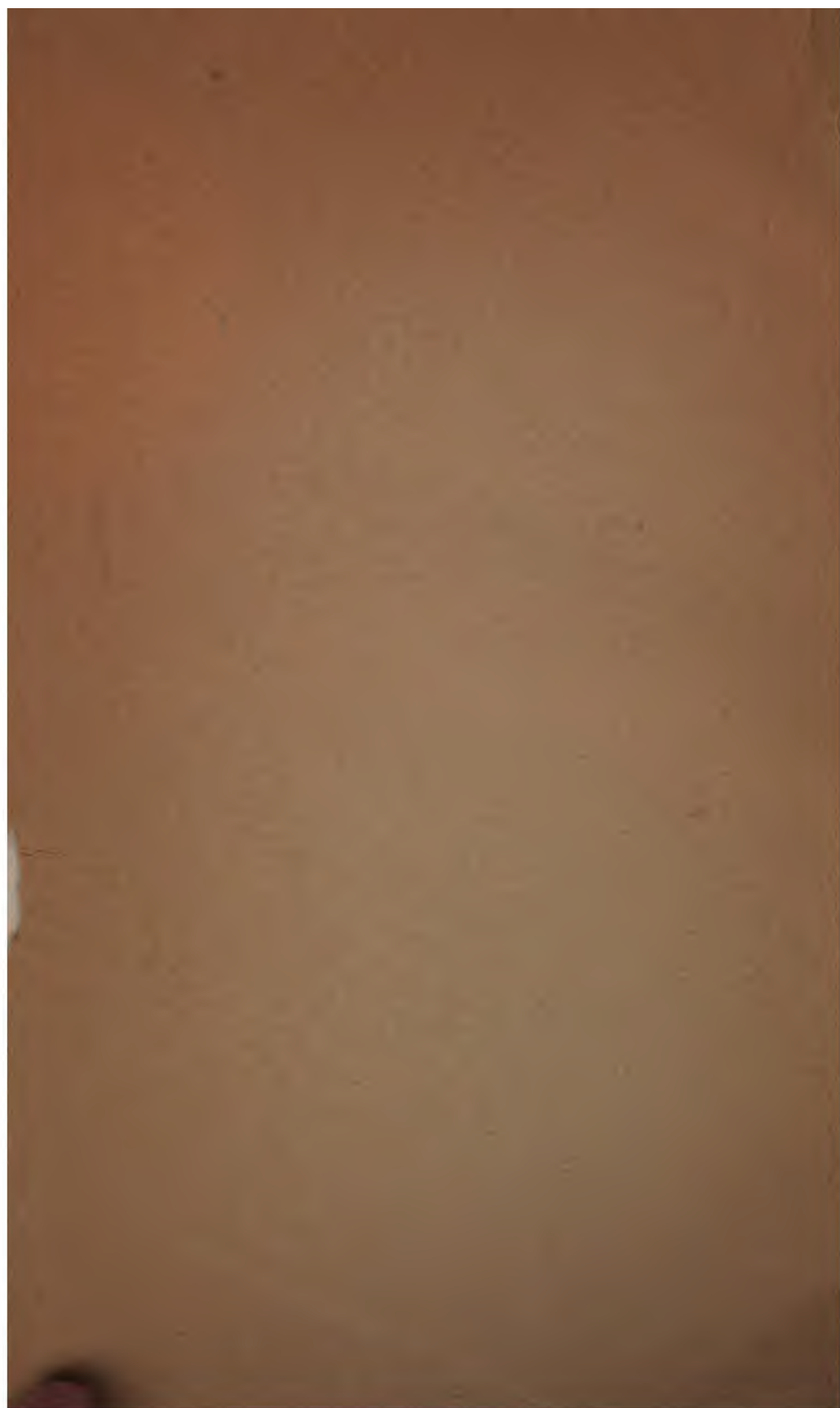
A DISSERTATION

SUBMITTED TO THE FACULTY OF THE GRADUATE SCHOOL OF ARTS
AND LITERATURE IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

(DEPARTMENT OF POLITICAL SCIENCE)

BY
JEREMIAH SIMEON YOUNG

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INTRODUCTION.

THE object of the present dissertation is to trace the origin, construction, administration and surrender of the Cumberland Road, keeping in mind two points of view, viz.: (1) political influences; (2) constitutional bearings and significance. The genesis of the idea back of the Cumberland Road is found in the imperfect means of communication in the colonies, the expansion of the population westward of the Alleghanies, the existence of a public domain together with the admission of the states carved from it, and finally the necessity of binding together the East and the West by means of a great road. The United States was moved by a political motive; the states, mainly by a commercial one.

The treatment of the subject is in the main historical, although no claim is made to completeness from this point of view. The historical method is used to bring into view the political and constitutional evolution of the subject. The historical side of the subject has been treated in the *Old Pike* by Searight, *The Old National Road* by Hulbert, and *The Cumberland Road as a Union-Making Force* by Sparks. The attempt in this research is made to treat the Cumberland Road as a central thread running through the subject of internal improvements until 1856.

The preparation of the thesis began in the fall of 1897 in a seminar at the University of Michigan, under the direction of Professor Andrew C. McLaughlin, and has been continued in graduate work at the University of Chicago under the direction of Professor Harry P. Judson and Dr. Ernst Freund.

I. EARLY TRANSPORTATION DIFFICULTIES.

1. *Communication in the colonies.*—The first means of communication utilized by the early colonists were the water channels. Before the era of turnpikes, canals, and railroads the population fringed the sea-coast and followed the navigable rivers into the interior. The French held the St. Lawrence and the Mississippi; the Spanish thought Florida to be an island; the Puritan settlements were known as the Massachusetts Bay colonies; the Virginia and Maryland colonies were designated as the settlements on the Chesapeake Bay; New Amsterdam was located on two islands at the mouth of the Hudson; New Jersey was known as New Netherlands at first; and the other colonies were either on the coast or on important rivers.¹

These rivers of the Atlantic plain furnished excellent thoroughfares for communication. Their peculiar character greatly facilitated this use. Indeed, it may be said with truth that all the Atlantic coast rivers end in "drowned valleys;" that is, the tide rolls into the James to Richmond; the Delaware to Trenton; and the Hudson to Albany. They are great arms of the ocean extending far inland. They were the nerve-currents reaching to and from the extremities of the colonies. They were the media of internal commerce, and because of their great number and excellence the era of artificial means of communication was postponed until demanded by force of circumstances.

The chief reason for the tardy demand for roads is that there was little intercolonial communication. Each colony had one or more good sea ports; the rivers did not form systems, for each flowed directly to the ocean, and thus accommodated a narrow string of isolated settlements; racial and religious differences caused jealousies; there were three distinct forms of colonial government, with little in common; the English navigation laws kept each colony a somewhat isolated unit anchored to the mother-country. These centrifugal forces held the colonies apart; besides, the settlements, being on rivers, were so widely separated that a union of effort at road-making was next to impossible. As a result of all these conditions, the meager intercolonial trade allowed by the mother-country went down one river to the ocean, then along the coast, and finally up a second river to the

¹ *Development of Transportation*, p. 8.

destined inland point, thus traveling three sides of the square instead of one—a short road across the land.

As settlements began to reach out from the rivers inland, the necessity for roads gradually arose; but neighborhood, and not inter-colonial, roads were deemed adequate. These short roads were constructed under authority of laws copied from England.¹ These laws, as a rule, gave the care of the roads to the local governmental units. They provided for the appointment of road overseers, the compulsory process of securing road labor, and the right to levy a tax on landowners. Of course, these laws were not completely uniform in the different colonies. The court of Massachusetts Bay, in 1639, after reciting that in some places the roads were "too straight," and that in other places the travelers "had to go too far about," ordered that all roads should be laid out "so as may be with most ease and safety of travelers," and "for this end every town should choose two or three men to join with two or three from the next town, and these should have the power to lay out the highways in each town where they may be most convenient, notwithstanding any man's property or corne ground." Here was slight co-operation between towns, with adequate legal authority to exercise the right of eminent domain.² In New York, in 1768, every landowner had a road duty imposed upon him. He was to make a road as far as his land reached "from neighbor to neighbor," to the end that "neighbors on occasion might come together." Any default in complying with the law subjected the offender to a fine of twenty-five guilders.³ A somewhat different policy was pursued in Pennsylvania. In 1692 control of roads was given to towns. In 1700 local roads were under control of county justices, while the King's Highway was supervised by the governor and his council.⁴

The matter of road-making was left largely to local communities and private initiative. One road in Pennsylvania took a century for completion on account of strong local prejudice. Rather than exercise the right of eminent domain, the authorities yielded to the wishes of landowners who did not wish to lose even a square foot of soil for the sake of good roads. The early colonist objected to a tax that did not directly benefit himself and his immediate neighborhood. Theoretically and legally, there were good provisions for roads; but social, commercial, military, and political necessity did not compel any general movements leading to co-operation; there was, moreover, no

¹ *Development of Transportation*, p. 22. ² *Ibid.*, p. 23. ³ *Ibid.*, p. 22. ⁴ *Ibid.*, p. 22.

strong and sympathetic central authority to lay out long roads and provide the means for their construction.

Although individualism was strong, the idea of a community of interests in transportation received a slight impetus from the opening of intercolonial post-routes in the latter part of the seventeenth century.¹ In 1673 the first post-rider was put on a route from New York to Boston. Thomas Neale was appointed postmaster-general of Virginia in 1692, but his efforts failed. The cause he assigned for failure was "the dispersed condition of the inhabitants." In 1710 Parliament passed an act establishing a general post-office for all her majesty's dominions in America. There was to be a line of posts from the Piscataqua to Philadelphia, which was soon extended southward to Williamsburg, Virginia, and then to the Carolinas. Benjamin Franklin was made superintendent of the post-office for North America in 1754. He did a good work, but the roads remained in a deplorable condition. As late as 1790, after the organization of the Union, there were only seventy-five post-offices in the United States, and the total length of post-roads was less than two thousand miles. These post-roads were only paths or traces. They could not be used for vehicles; hence only "pack-horse" industries could be used for land transportation.²

These facts show that even the transportation of the mails could not lead the colonists to any union of effort in road-making. What could arouse them to have a view larger than one simply local and individualistic?

2. *Early roads to the West.*—Centrifugal tendencies held the colonies apart commercially and politically; union of effort could only come from some cause that would threaten colonial safety or existence. This danger was furnished by the wars with France. The first three intercolonial wars were fought over questions originating in Europe. They drove the colonies to a partial union of effort; but the brunt of the military campaigns fell to the lot of the northern colonies. How did these wars affect the transportation question? The first three wars were characterized by similar features, namely, naval battles and unsuccessful attempts to invade Canada by way of Lake Champlain. Thus the water routes were used almost exclusively. But the fourth, or French and Indian, war grew out of local conditions—the Indian trade and territorial jurisdiction and control of the West.

England's colonial policy in the eighteenth century was formulated by the board of trade. This policy called for a home monopoly of the

¹*Ibid.*, p. 24.

²*Ibid.*

colonial trade, especially with the Indians; but this trade was controlled by the French because of their occupation of the St. Lawrence and lake territory. By the Treaty of Utrecht, the French admitted that the Five Nations were subjects of England. This gave the English colonies the right to trade west of the Alleghany Mountains. In 1744 the English paid the Iroquois £400 for lands between the mountains and the Mississippi; which was done regardless of French claims, possession, and protests. Four years later the Ohio Company was organized and granted large tracts of land in the West. In this way England hoped to secure the Indian trade; also to hold the French in check. Of course, this would involve England and France in war.¹ It was out of the questions of trade and conquest that the necessity for long wagon roads arose. Even strong military necessity growing out of northern and western expansion did not bring about a complete union of effort and a concentration on one good road to the West; hence the word "roads" must be used. The explanation of such conditions is interesting.

The persons who composed the Ohio Company were mostly Virginians, including Dinwiddie, the governor of the colony. Jealousy between Virginia and Pennsylvania over the trade of the West immediately manifested itself. The Virginians hoped to take advantage of the portages between the Potomac and the headwaters of the Ohio. In this way the Pennsylvanians would be almost excluded, because the French held the Alleghany branch of the Ohio.² The Virginians took steps to secure the southern or favored route over the mountains.³ In 1753 Thomas Cresop was employed by the Ohio Company to blaze out a track to the new country. Washington used and improved it when he crossed the mountains to warn the French to leave the Ohio Valley. This route became classic as the battleground for that great constitutional struggle over the question of internal improvements during the first half of the nineteenth century; but a battle on a smaller scale was waged between Virginia and Pennsylvania over the roads to the West in 1755 and 1758.

There was a general feeling on the part of the colonists, especially the Quakers of Pennsylvania, that the French and Indian war was brought on in the interests of the Ohio Company.⁴ When Braddock took charge of the English army in 1775, he found the Quakers and others in opposition to the war, in spite of the fact that the governor of Pennsylvania had directed the survey of a military road

¹ WINBOR, *Mississippi Basin*, p. 250.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, p. 307.

over the mountains north of Philadelphia in the direction of Fort Duquesne. Winsor holds that this was an easier route than the southern one to the Monongahela, and across a partially settled country offering better supplies. The southern or Washington route, up the Potomac to Fort Cumberland and over the mountains to the nearest settlement of the Ohio Company on the Monongahela, was selected by Braddock for the following reasons: No favors were to be shown Pennsylvania because of her apathy; Hanbury, a London merchant and shareholder in the Ohio Company, used his influence, for commercial reasons, in favor of a good military road by the shortest route to the company's western storehouse; Governor Dinwiddie, an active supporter of the war, was also a member of the Ohio Company; Washington favored the southern route because he knew it well.¹ The time taken by Braddock to open a military road one hundred miles through a new country, far from his base of supplies, gave the French an opportunity to concentrate their forces at Fort Duquesne and defeat the English army. So much for the effects of Virginia commercialism on the location of the real forerunner of the Cumberland Road.

The Pennsylvania side of the road question was not dissimilar, except as to the military result. The year 1758 found Forbes at the head of the army for the reduction of Fort Duquesne. His headquarters were at Philadelphia, and most of the army was in Pennsylvania. The question of the route by which he was to march immediately arose. It was pointed out by the Pennsylvanians that the route by Raytown through Pennsylvania was shorter and better than the one by Fort Cumberland over which Braddock had marched to defeat. Forbes decided for the Pennsylvanians in favor of the new northern route, even in the face of stout opposition from the Virginians. Washington was emphatically in favor of the Braddock road.² He wrote:

The Pennsylvanians whose present as well as future interest it was to have the expedition conducted through their government [territory] and along that way, because it secured their frontiers at present, had prejudiced the General absolutely against the old Road and made him believe that *we* were the partial people, and determined him at all events to pursue that road.³

Washington's melancholy prediction that, if time were taken to cut the new road, Forbes's expedition would meet the same fate as befell Braddock, did not prove true. The French were routed, and the Ohio country was nominally in the hands of the English.

¹ WINSOR, *Mississippi Basin*, p. 359; also *Narrative and Critical History*, Vol. V, pp. 493, 494.

² *Washington's Writings* (SPARKS'S edition), Vol. II, pp. 300-302. ³ *Ibid.*, p. 308.

The Ohio section of the West would no doubt have filled rapidly with Englishmen from the East, had it not been for the Revolution. After this war the Indians became intensely hostile toward the colonists of the Atlantic plain; besides, the British retained the forts of the Northwest. These two causes—the hostility of the Indians and the retention of the posts—turned the eastern tide of immigration southward of these two military routes just described to one long afterward known as the Wilderness Road.

It was by this route that the people from Philadelphia went through Lancaster and York to Wadkin's Ferry on the Potomac; thence through Martinsburg and Winchester up the Shenandoah or Virginia Valley to Fort Chissel, where they were met by the people from Richmond. These two streams of immigration were met by a third from the Carolinas at Cumberland Gap, between Kentucky and Tennessee, where they passed into the beautiful valley of the West'. In 1771 Boone explored Kentucky, in spite of the king's proclamation to his "loving subjects" to the contrary. There had to be an outlet for the populous states immediately east of Kentucky and Tennessee, because high taxes and hard times followed immediately after the close of the Revolution.

Before the Revolution Fort Pitt and Fort Watauga were the only English settlements west of the mountains. In 1790 Kentucky had a population of 73,000; two years later it was admitted as a state; and Tennessee followed in 1796. Part of this enormous tide of immigration went west by the way of the Forbes and Braddock routes, but most of it went over the Wilderness Road.²

In 1772 there were some united efforts at improving this road by means of private subscriptions.³ In 1795 the Virginia legislature appropriated £2,000 for the improvement of the eastern part. The same year it was made a wagon road in its western part by Kentucky; and two years later \$500 was appropriated for repairs and the erection of toll gates; but tolls were unpopular in a new country, and the road never became a turnpike.

Military necessity, private initiative, and small appropriations by states immediately concerned were not sufficient for the construction of a good road over the mountains through a sparsely settled intervening country. As no single state was financially able or willing to undertake such a work, attention was turned to the treasury of the United States; but strict construction of the Constitution and hard times acted as a

²SPENCER, *The Wilderness Road*.

³*Ibid.*, p. 52.

³The highest was £3; lowest, 4 s.

bar. The first solution—only a partial one—was reached by enlisting the proprietary power of the United States through a use of the public domain for this purpose. As the United States had no public domain south of the Ohio at the beginning of the nineteenth century, the scene for road-building shifted from the Wilderness Road to a section where the United States owned lands.

II. GENESIS OF THE CUMBERLAND ROAD.

1. *The public domain and the Cumberland Road fund.*—Near the close of the Revolution a few of the eastern states advanced claims to lands in the West. These claims were based principally on original colonial charters; but there were some other grounds. North of the Ohio there was a hopeless tangle of overlapping state claims. Six states—Maryland, Pennsylvania, Delaware, New Jersey, New Hampshire, and Rhode Island—could claim no lands in the West. Under the leadership of Maryland they contended that the territory had been won from the French by common effort, and consequently should belong to the Union as a whole and not to the individual states.¹ This view prevailed and the United States came into possession of the public domain.

The ordinance of 1787 formed a territorial government for this country, and provided for its admission into the Union on an equality with the original thirteen states. The only provision in this now famous document that pertained to the transportation question was as follows: "The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free."² This revealed an attitude of mind favorable to comprehensive plans for transportation; but the road between the East and the West was left untouched.

Large tracts of land were immediately sold in the Northwest; but, owing to hard times, full payment was not made. When Ohio applied for admission in 1802, this question of land still unpaid for was a matter of considerable importance. The ordinance provided as follows: "The legislatures of those territories or new states shall never interfere with the primary disposal of the soil of the United States." It was immediately feared that the new state could sell these unpaid-for lands for nonpayment of taxes; but such a sale would cause friction and might interfere with the "primary disposal of the soil."

Treasurer Gallatin reported to the committee that had the matter in charge the following plan:

That one-tenth part of the net proceeds of the lands lying in said state

¹ HERBERT ADAMS, *Maryland's Influence on Land Cession to United States* (Johns Hopkins University Studies, Third Series).

² Ordinance, 1787, Art. IV.

hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied to the laying out and making of roads, leading from the navigable waters emptying into the Atlantic to the Ohio and continued afterwards through the state; such roads to be laid out under the authority of Congress, with the consent of the several states through which the same shall pass.

As an equivalent the state was to exempt all land sold by Congress from taxes for ten years from and after the completion of payment of purchase money to the United States.¹ The general plan was adopted, except that 5 per cent. was substituted for 10 per cent.; and five years of exemption instead of ten. The binding force of the ordinance was recognized, and these propositions were submitted to the Constitutional Convention of the proposed new state of Ohio. The convention at Chillicothe agreed to the plan, with certain modifications. The change touching the road question was that no less than 3 per cent. of moneys arising from the sales of lands in Ohio should be expended on roads *within* the state under the direction of the state legislature.* This change was adopted by Congress March 3, 1803. This left a "2 per cent. fund" for the construction of roads *to* and *through* the state to be expended under the direction of Congress. The Cumberland Road fund originated in a "compact" between the United States and the state of Ohio.³ It was intended to settle two difficulties: (1) to provide a fund for a road to the West; (2) to avoid friction with the state of Ohio in regard to the "primary disposal" of federal lands.

2. *Commercial and political problem of the East and the West.*—In 1806 Congress was virtually forced to do something to bind the East and the West together commercially.

After the Revolution the transportation difficulties formed an important social, commercial, and political barrier to the union of the states.⁴ The topography of the country emphasized these difficulties. The states to the east and those to the west of the Alleghany Mountains, respectively, formed separate and distinct geographical unities.⁵ Physical barriers in the early days were all-important, and this wedge of mountains was a disintegrating force. A brief examination of the transportation difficulties, as they affected the states commercially and politically, is appropriate at this point.

¹ *Annals*, 7th Cong., 1st Sess., pp. 1078-1103; *Writings of Gallatin*. Gallatin indorsed this report to the committee as the "Origin of the National Road."

² *U. S. Statutes at Large*, Vol. II, p. 226.

³ *Ibid.*, Vol. II, p. 226.

⁴ JOHN FISKE, *Critical Period*, p. 61.

⁵ J. W. BURGESS, *Political Science and Constitutional Law*, Vol. I, p. 11.

The Atlantic plain transportation was reasonably good, as the rivers led to and from the seacoast markets. The West had a central thread of transportation by means of the Ohio to the Mississippi, thence to the Gulf; but this looked *from* and not *toward* the Atlantic seaboard markets. The Ohio occupied a large place in the public mind of the eighteenth century.¹ It played an important political rôle after the French and Indian war. George III. was opposed to an extension of the eastern colonies westward;² but the English board of trade wanted the trade of the Ohio country; Franklin wanted colonies in the West, and pointed out to the board of trade that a road forty miles long would connect the Potomac with the headwaters of the Ohio, and thus secure this trade.³ The road was not built; but, instead, in 1774 the Quebec Act was passed. The tendency of this act was to sever the West from the East and to bring about commercial affiliation between the West and the St. Lawrence system of transportation. If the plans of Vergennes had succeeded in 1782 in the Treaty of Paris, the United States would have been cooped up east of the mountains. This would have ended the question of binding the West to the East.⁴ In spite of Vergennes, the diplomacy of the American commissioners triumphed, and the West, or a part of it, was yoked with the East by the treaty that closed the Revolution.⁵ But there must be something more than a treaty to bind two widely different sections of country together; there must be mutual interest and accommodation; and there was not a universal recognition of this principle in the latter part of the eighteenth century.

The misapprehension of the principle just stated was manifested by a neglect of the transportation question. The tremendous movement of people to the West by the routes already described brought the question of eastern neglect into bold relief. Transportation was the most fundamental question in the early history of the West. It was neglect on the part of Virginia and North Carolina that aroused the people of Transylvania and Franklin to assume such a formidable attitude, amounting almost to withdrawal from the mother-states just east of the mountains; a question of transporting grain to the Atlantic seaboard that caused the Whiskey Insurrection in western Pennsylvania; a commercial question touching transportation that alienated the

¹ ALDEN, *New Governments West of the Alleghanies before 1780*. All the proposed new colonies and states were on either side of the Ohio River or touched it at some point.

² His proclamation of 1763 indicated this.

³ *Franklin's Works*, Vol. V, pp. 47, 48. Franklin no doubt had an eye to the political effects of such a road.

⁴ B. A. HINSDALE, *Old Northwest*, p. 141.

⁵ FISKE, *op. cit.*, chap. 1.

people of western New York and drove them to trade with Montreal; it was the effort to secure the free navigation of the Mississippi that caused the western ferment which led to the purchase of Louisiana in 1803; and all this cumulative evidence led the acute politician, Aaron Burr, to think it possible to organize an empire of the West separate and distinct from the East.

These conditions and possibilities were foreseen by Washington years before. In 1754, when he made his trip to Fort Duquesne, the importance of the West impressed him.¹ He exhibited his faith by securing 103,354 acres of land west of the mountains.² The necessity of improving the navigation of the Potomac was dwelt upon. In 1774 he made a report to the Virginia House of Burgesses on the same subject; but before anything could be done he was called to command the continental troops, and the matter was dropped until 1784.³

At the close of the Revolution Washington spent some time examining the portages between the eastern and western waters, traveling more than 650 miles.⁴ The results of the investigations he reported to Harrison, governor of Virginia. He pointed out the advantage of improving the navigation of the Potomac, and of making a good road over the mountains from the head of such navigation. He observed that the "West stood on a pivot." A false step, he said, might turn it either to Spain or to England. He even wrote to a member of Congress pointing out the political significance of binding the West to the East by means of internal improvements—a chain which could never be broken.⁵

The practical outcome of Washington's strong plea was that the Potomac Company was incorporated by Virginia and Maryland for the purpose of opening a good route to the West. Washington was elected president of the company. Its membership was made up of Maryland and Virginia men.⁶ The company was active for a time, spending \$700,000 on the improvement of the river.⁷ Soon after the election of Washington as President of the United States, the Potomac company

¹ PICKELL, *Early Life of Washington*, p. 29; *Washington's Writings*, Vol. I; *House Reports*, 19th Cong., 1st Sess., No. 228, p. 1.

² ADAMS, *Washington's Interest in Western States* ("Johns Hopkins University Studies," Third Series).

³ PICKELL, *op. cit.*, p. 29.

⁴ *Ibid.*, p. 39.

⁵ MARSHALL'S *Life of Washington*, Vol. V, p. 14.

⁶ It was on the question of this trade route to the West that Virginia and Maryland united for a conference at Alexandria; this action led to the calling of the Annapolis convention, which in turn led to the calling of the federal convention at Philadelphia.

⁷ *House Reports*, 19th Cong., 2d Sess., Vol. II, No. 90, p. 2.

almost ceased operations. The immediate object for which the company was organized was not realized; but its work pointed the best way to the West, and showed that commercial interest is the strongest bond for political union.

The economic situation will be clearer by the use of a few statistics. It cost \$125 to move a ton of merchandise from Pittsburg to Philadelphia; west of the mountains salt cost \$5 per bushel, and steel 25 cents per pound; to transport a bushel of wheat from the West to New York city, \$1 must be paid. These charges were so high as practically to prohibit the movement of merchandise between the two sections.¹

For overcoming these difficulties, Pennsylvania, in 1792, incorporated a company to make an artificial road from Philadelphia westward to Lancaster. Maryland undertook to make a road from Baltimore to Fort Cumberland on the Potomac. These roads were constructed by private corporations, aided by subscriptions on the part of the state. There was much promise in this plan, as it was backed largely by capitalists interested in the western trade; but the capitalists were soon drawn off to engage in shipping, because the European wars left the carrying trade to be monopolized by the shipowners of the United States.

The work already done for the improvement of transportation did not stop the clamor from the West. The roads thus far constructed did not reach over the mountains. High rates of toll were charged, which were immensely unpopular. What the West demanded was a good road which should be free. This was in mind when the compact between the United States and Ohio was made. Congress was constantly besieged for aid. Under the guise of giving access to its western land, Congress had granted Ebenezer Zane, of Wheeling, three sections of land to cut a trace through what is now Zanesville, Lancaster, and Chillicothe to Limestone, Ky.² In 1792 a mail route was established between Richmond, Va., and Danville, Ky.³ Two years later a mail route was established from Philadelphia to Pittsburg, and finally to Louisville, Ky.

This taste of congressional action only whetted the appetite of the West. The people of this section became jealous of the East on the question of improvements. When the Union was formed, all the states touched the Atlantic. These Atlantic states had received the assent of Congress to levy tonnage duties for the improvement of rivers and har-

¹ J. B. McMASTER, *History of the People of the United States*, Vol. III, pp. 463, 464.

² SPARKS, *Expansion of the American People*, p. 116.

³ U. S. *Statutes at Large*, Vol. I.

bors.¹ Besides this, Congress, under authority of the commerce clause, had appropriated directly for the support of lighthouses, beacons, and buoys.² These two plans might have worked well, if the new states had been on the seaboard. But they were not. They complained bitterly that they as consumers were compelled to pay indirectly for the seaboard improvements; but if they wished internal improvements, they must tax themselves directly. They received no help from the East, and wanted Congress to make an "advance" on the Ohio road fund, reimbursable when the money should be collected. Every Congress was besieged with letters and petitions for a road. Various attempts were made to begin the work; but they failed,³ until finally the demands of the West were put so forcibly that a Senate committee was appointed to bring in a report on the enabling act of Ohio and the "2 per cent. fund."⁴ This report was accepted, and the "advance" made in 1806. The long struggle on the part of the West seemed crowned with success.

¹ Constitution, Art. I, sec. 10, par. 3. Thirty-four such assents have been given: LALOR, Vol. II, p. 556.

² To 1806 Congress appropriated \$120,570; *U. S. Statutes at Large*, Vols. I, II.

³ *Annals of Congress*, 8th Cong., 1st Sess., pp. 254, 263, 273, 297, 305, 631, 876, 943, 986, 1012, 1241, 1242; 8th Cong., 2d Sess., pp. 27, 28, 32, 37, 43, 63, 689.

⁴ *Miscellaneous State Papers*, Vol. I, p. 432.

III. LOCATION, CONSTRUCTION, AND ADMINISTRATION OF THE ROAD.

1. *Location of the Cumberland Road.*—According to the report of the Senate committee, the “2 per cent. fund” for “the laying out and making roads from the navigable waters emptying unto the Atlantic to the Ohio” amounted to \$12,652. As the clamor was for a trade route, the distances from the navigable waters of the West to Philadelphia, Baltimore, Washington, and Richmond were indicated to the Senate. Three eastern cities were striving for the trade of the West. The mercantile intercourse of the citizens of Ohio was chiefly with Philadelphia and Baltimore; not very extensive with towns on the lower Potomac; and still less with Richmond, Va.¹ The state of Virginia was doing little in 1805 to make roads westward; but Pennsylvania was making great efforts to command the trade of the West by attempting to open a road from Philadelphia to Pittsburg; the state of Maryland, with no less spirit and perseverance, was constructing a road from Baltimore in the direction of Fort Cumberland. As the territory of Maryland did not reach over the Alleghanies, it was thought that her interest would not complete the road so far as to connect with the Monongahela, the first navigable stream west of the mountains. With the hope that the Potomac company would finally clear the Potomac River of obstructions to Fort Cumberland, the beginning of Braddock’s Road, the committee, largely influenced by the constantly increasing Ohio trade with Baltimore, recommended the laying out and making of a road from Cumberland on the Potomac in Maryland to the Ohio at some convenient point opposite Steubenville and the mouth of Grave Creek below Wheeling. The distance from Cumberland to the Ohio was thought to be 136 miles by the usual route; by the nearest, 110 miles. This route would meet the roads leading from Baltimore and Washington, D. C.: would cross the Monongahela at Brownsville, where boating was good; would intersect the Ohio where roads could easily be made passable through the populous parts of the state of Ohio.² The committee was under the influence of Maryland and Virginia. It was no doubt largely influenced by the writings of Washington concerning the route which he had selected; also by the work of the Potomac company.

¹ *Miscellaneous State Papers*, Vol. I, p. 432.

² *Ibid.*, pp. 432, 433.

The first direct legislation on the Cumberland Road, aside from the original compact with Ohio, bore the title, "An Act to regulate the laying out and making a road from Cumberland in the State of Maryland to the State of Ohio."¹ It was approved March 29, 1806,² and authorized the President, with the advice and consent of the Senate, to appoint three disinterested citizens as a board of commissioners to lay out the road. The President might accept or reject their plans and recommendations. If he accepted the report, he was authorized to pursue such measures as he might deem proper to secure the consent of the states through which the road would pass, "and having secured this consent he was further authorized to take such measures as he might think wise in constructing it." The only points located by the act were the beginning and the termination, or Cumberland and the termination on the Ohio. It was to be laid out in such direction as the commissioners and the President should think most proper, "all circumstances considered."³

Jefferson, transmitting the first report of the commissioners to Congress,⁴ stated that the consent of the Legislatures of Maryland and Virginia had been received; but the consent of Pennsylvania had not yet been granted.⁵ The objects governing the commissioners were: (1) shortness of distance between the navigable points on the eastern and western waters; (2) the best method of diffusing benefits, with the least distance of road; (3) a consideration of the comparative merits of towns and settlements with present and prospective populations. The report bore testimony to the importunities of the inhabitants of every part of the country that thought its ground entitled to consideration. The route recommended by the commissioners followed the general course of Braddock's Road. It was proposed to open upon equal terms all parts of the western country. If the recommendations of the committee had been accepted, the route⁶ would have been practically direct from Cumberland to the Ohio; but the old opposition exhibited by Pennsylvania again asserted itself.

The people of Pennsylvania, and especially of Philadelphia, were commercially jealous of the people on the Potomac and the Chesapeake. This jealousy was directed against Baltimore in particular.

¹ *U. S. Statutes at Large*, Vol. II, p. 357.

² The sum of \$30,000 was appropriated. This was thought a considerable "advance."

³ *U. S. Statutes at Large*, *loc. cit.*

⁴ The commissioners were Thomas Moore and Eli Williams, of Maryland, and Joseph Kerr, of Ohio.

⁵ *Miscellaneous State Papers*, Vol. I, p. 474.

⁶ This route embraced 24.5 miles in Maryland, 75.5 miles in Pennsylvania, and 12 miles in Virginia.

The people of Pennsylvania believed that the road was being constructed in the direct interests of Baltimore; hence the consent of Pennsylvania for the road to pass through her territory was withheld until April 9, 1807. The line recommended by the commissioners did not suit the legislature. The first section of the act granting consent for the road to pass through the state was as follows:

Resolved, That the route laid down and reported by the commissioners to the President of the United States be so altered as to pass through Uniontown in the county of Fayette, and Washington in the county of Washington, if such alteration can, in the opinion of the President, be made consistently with the provisions of an act of Congress passed March 29, 1806; but if not, then over any grounds within the limits of the state which he may deem most advantageous.¹

The policy of attempting to dictate the points on the road at the same time that the consent of the state was given is a matter of great interest. It played an important part in the early history of the Cumberland Road, and the precedent then established had an important bearing on the later history of this public improvement.²

February 19, 1808, President Jefferson notified Congress that he had approved the route recommended by the commissioners as far as Brownsville, Pa., with the single deviation which carried it through Uniontown, Pa.³ Continuing, he said:

From thence the course to the Ohio and the point within the legal limits at which it shall strike that river is still to be decided. In forming this decision I shall pay material regard to the populous parts of the state of Ohio, and to a future and convenient connection with the road which is to lead from the Indian boundary near Cincinnati by Vincennes to the Mississippi at St. Louis. . . . In this way we may accomplish a continual and advantageous line of communication from the seat of the General Government to St. Louis, passing through several very interesting points of the Western Country.⁴

Pennsylvania had carried its point on locating the road through Uniontown. But the location north of the direct line through Washington seemed to be defeated. The people of Washington threatened opposition by force.⁵ The services of Gallatin, who had formerly lived in Washington County, Pa., were enlisted. Writing to Jefferson under date of July 27, 1808, he said:

¹ *Laws of Pennsylvania*, 1807, p. 185.

² See pp. 25, 28, 45.

³ Uniontown was the home of Gallatin, Jefferson's secretary of the treasury. It was not on the most direct route. Jefferson's decision was undoubtedly influenced by the interference of the Pennsylvania legislature.

⁴ *Miscellaneous State Papers*, Vol. I, p. 714.

⁵ *Jefferson's Works*, WASHINGTON's edition, Vol. V, p. 333.

Permit me, however, to state, the county of Washington, with which I am well acquainted, having represented it six years in Congress, gives a uniform majority of about two thousand votes *in our favor*, and if this be thrown by *reason of this Road* in a wrong scale, we will infallibly lose the state of Pennsylvania at the next election. . . . I have been reminded of this subject by the enclosed letter from an *influential* and *steady* Republican of that county.¹

Jefferson, under date of August 6, 1808, wrote to Gallatin. He deplored having yielded to Pennsylvania in the first instance, and deprecated the unworthy means that were being used by the Pennsylvanians to influence him. He doubted whether the commissioners had sufficient money remaining to make a survey as far north as Washington. He also seemed disturbed at what Wheeling would say if the road were taken from it and given to Washington;² but, writing to the commissioners on location the same day, he ordered a survey by Washington. He observed that the principal object should be to run the road in a direct route; but if deflections would benefit certain towns and better accommodate travelers, they should receive consideration.³ The commissioners viewed this route, but rejected it because, being so far north, it would lengthen the road and increase the angle at the Ohio, if Wheeling remained the point of termination.⁴

Here the matter was allowed to rest until March 3, 1811. At this time an entering wedge was driven for changing the location from the direct to the circuitous route by Washington, Pa. Congress passed an act authorizing the President to permit deviations from the courses already run by the commissioners; but no deviations were to be made from the principal points already established on the route.⁵ Under authority of this act, the line was changed to pass through Washington, Pa., in accordance with the joint resolution of the Pennsylvania legislature.⁶ There was a spirited contest between Steubenville, Ohio, and Wheeling, Va., over the point at which the road should touch the Ohio. Wheeling won through the efforts of Henry Clay. The states of Ohio and Virginia in their corporate capacity did not become involved. This completed the location as far as the Ohio, and fulfilled the original part of the compact between the United States and Ohio.

When the first part of the location was approved, Jefferson thought the road would pass west of the Ohio through Chillicothe, Lebanon,

¹ *Gallatin's Writings*, ADAM's edition, Vol. I, p. 395.

² *Jefferson's Writings*, *loc. cit.*

⁴ *Miscellaneous State Papers*, Vol. I, pp. 940, 941.

³ *Ibid.*, p. 332.

⁵ *U. S. Statutes at Large*, Vol. II, p. 661.

⁶ *Ibid.*, Vol. III, p. 560. See resolution of Pennsylvania, p. 22.

and Hamilton in Ohio, and connect with the military road leading through Vincennes to St. Louis. The road was to accommodate the southern or populous parts of Ohio; but the defeat of the British in the Northwest and the subjugation of the Indians opened the western and northern sections of the Northwest. Settlements sprang up in the new country; and before any work was done on the road west of the Ohio, Indiana was admitted in 1816, and Illinois in 1818. The United States entered into "compact" with these states similar to the one existing with Ohio.¹

In 1820 an appropriation was made for surveying and locating a continuation of the Cumberland Road from Wheeling through the states of Ohio, Indiana, and Illinois to a point on the Mississippi "between St. Louis and the mouth of the Illinois." The previous political intrigues and state jealousies taught Congress a lesson. The law required that the road was to run in as straight a line as practicable. The purpose of this act, as recited in the preamble, was to increase the value of the public lands. The money appropriated was not reimbursable from the "2 per cent. fund."² In this respect Congress departed temporarily from the previous policy and wheeled into line with the other internal-improvement plans of the day.

The report of the commissioners on location stated that a direct route would pass south of the capitals of Ohio, Indiana, and Illinois.³ Shortly before this report was received, Missouri entered the Union. The United States entered into a compact with this state similar to the ones existing with Ohio, Indiana, and Illinois.⁴ In 1825 Congress made an appropriation for completing the survey to the capital of Missouri. The southern parts of Ohio, Indiana, and Illinois were being fairly well accommodated by steamboat navigation on the Ohio. This, together with the tide of immigration to the northern sections, induced Congress to designate by law the capitals of Ohio, Indiana, and Illinois as points on the road.⁵ This carried the road north of the route originally projected by Jefferson.

In 1825 the road was located on a direct line as far west as Columbus; in 1826 a direct line was run from Columbus to Indianapolis. Only one town, Newark, east of Columbus, made an effort to carry the road from the direct route. The effort was unavailing. The state of Ohio did not interfere, and the direct route was approved.⁶

¹ *U. S. Statutes at Large*, Vol. II, pp. 290, 430. ² *Ibid.* p. 604.

³ *State Papers*, Vol. VII, No. 82, 16th Cong., 2d Sess. ⁴ *U. S. Statutes at Large*, Vol. III, p. 574.

⁵ *Ibid.*, Vol. IV, p. 128. ⁶ *State Papers*, Vol. V, No. 74, 19th Cong., 2d Sess.

An interesting struggle was waged by Dayton and Eaton, supported by the Ohio legislature, to have the direct route from Springfield, Ohio, to Richmond, Ind., changed to pass south of the direct line through these two points.¹ The Pennsylvania interference was to be repeated in spite of the action by Congress in favor of a direct route. In 1830 the legislature of Ohio passed a resolution which declared that the transportation of the mails would be facilitated and public interest promoted by changing the location of the road to pass through Dayton and Eaton. A committee of the House of Representatives brought in a report in accordance with this resolution, but no change was made.² An act was passed and approved March 3, 1835, which directed the secretary of war to have the line between Springfield, Ohio, and Richmond, Ind., reviewed. After this was done, the line of the road was to run in such a way as would "best promote the public convenience and interest." The location so made, if approved by the President, was to be established between these two points.³ Under authority of this act, a survey was made south through Dayton and Eaton, but President Jackson approved the direct route.⁴

The Dayton and Eaton people, not willing to accept this decision as final, carried the fight to Congress and made the first direct attempt in the history of the road to have the national Congress set aside a decision of the President. The matter came before a committee of the House. Joseph Crane appeared for the state of Ohio. He called attention to the act of 1835 which required that the line should run between Springfield and Richmond in such a way as would "best promote the public interest and convenience." The direct line had been favored because it was about four miles shorter than the route through Dayton and Eaton. In his opinion, there were counterbalancing advantages in favor of the Dayton-Eaton, or southern, route :

The transportation of the daily mail would be cheaper, as there was a daily mail stage from Columbus through Springfield to Dayton, thence on through other towns to Cincinnati; the western part of Ohio and the eastern part of Indiana received and would continue to receive their great eastern mail through Dayton. The upper route west of Springfield did not pass a single village or post-office, and half the way passed over a flat, wet, thinly inhabited country. The lower route would pass through the Mad River valley; here were many mills and

¹ See map.

² *Reports of Committees*, Vol. III. No. 420, 21st Cong., 1st Sess.

³ *U. S. Statutes at Large*, Vol. IV, p. 772.

⁴ *Executive Documents*, Vol. III, No. 62, 24th Cong., 1st Sess.

manufacturing establishments; it would pass through two towns—Dayton and Eaton; Dayton was a town of five thousand inhabitants, and was important for its internal improvements; the Mad River & Erie Railroad would soon reach it from Portland and Tiffin, Ohio, and be extended to Cincinnati, where it would connect with a railroad which was being built from Charleston, S. C., to that point.

The southern route would accommodate the agricultural, commercial, and manufacturing population west of Springfield better than the direct route. He acknowledged that overruling the decision of the President would establish a precedent, but thought the public interest and commerce would justify such action.¹

A letter was produced from the Post-Office Department. This stated that there was no necessity for a mail route by the direct line. The great western mail and the mail for the western part of Kentucky, Tennessee, Alabama, and a part of Mississippi passed through Dayton.²

D. F. Heaton, a special delegate from Dayton and Eaton, was next heard by the committee. He first recited the history of the "compact" between the United States and Ohio, and concluded that the road belonged to Ohio. He thought her interests should be consulted in its location. "So thought Jefferson, whom some supposed to have been the greatest and best man that ever lived." "But now," continued Heaton "at this late day, after the head of the patriot, the sage, the philosopher, is laid low and cold in the grave, are his doctrines and principles to be rejected and trampled under foot? No."

He next took up the question of public interest and commerce. He called the attention of the committee to the fact that the road had been under the supervision of the president from the first. Jefferson had caused it to pass through Uniontown, Pa., because the "public interest" required it. Uniontown was not larger than Eaton and never could be as large as Dayton. The road originated in compact; had been constructed, in whole or in part, from a fund reserved for the purpose, for which Ohio had given an equivalent; therefore the state legislature and the inhabitants of the populous parts of the state should be heard on a question of location. He mentioned that the legislature of Pennsylvania was heard on the location of the road through Uniontown and Washington, notwithstanding the fact that Pennsylvania was only a party to the "compact" in common with the other states of the Union; she contributed nothing to the road; and the points she designated took the road a greater distance out of a

¹ *Reports of Committees*, Vol. III, No. 367, p. 4, 24th Cong., 1st Sess.

² *Ibid.*, p. 5.

direct line than the points Ohio proposed. He concluded by saying that Ohio had done much in the construction of the road, not only in her own territory, but also in that of Maryland, Pennsylvania, and Virginia. Her prayer to be heard on the question of location within her borders should be granted.

The residents along the direct route seemed secure. They sent a few remonstrances, but did not have the support of the state legislature, as did Dayton and Eaton. One memorial, numerous signed, by inhabitants of Clark county¹ cited that Congress had refused to make a deviation in favor of Newark, Ohio, "even when the citizens of that place had some show of reason on their side." This, they said, clearly indicated that the road was projected and carried into execution for the benefit of the nation, and not for the accommodation of a few towns. They felt that a departure from this policy would not be more likely to take place than a violation of the most solemn treaty. They would regard a change in the location of the road in the light of a public calamity.² Many private communications were sent to the committee. Thinking the location forever settled, some had made investments along the line; the general government must protect these vested rights, or be liable for personal claims³ amounting to a very large sum. Others would claim "heavy damages,"⁴ as a change would work an "act of individual injustice." Even the assessors of the rival counties of Clark and Preble were thrown into the struggle on a statement of the comparative value of lands touching the route.

The committee reported to the house that, in its opinion, it was expedient to change the location of the Cumberland Road from the direct route to pass through the towns of Dayton and Eaton;⁵ but Congress sustained the President, and the direct line remained the established route in Ohio, in spite of the efforts of Dayton, Eaton, and the Ohio legislature.

No material difficulties presented themselves on the question of location in Indiana, as the country was thinly settled. In 1828 the route from Richmond to Indianapolis and Terre Haute was adopted.⁶

State interference reached its climax in the struggle of Missouri and Illinois over the location of the road. By the act of 1825 Con-

¹ Jealousy between Springfield and Dayton was largely responsible for this fight in Congress on location.

² *Executive Documents*, Vol. V, No. 206, 24th Cong., 1st Sess.

³ *Ibid.*, p. 5.

⁴ *Ibid.*, Vol. IV, No. 184, p. 7.

⁵ *Reports of Committee*, Vol. III, No. 367, p. 1, 24th Cong., 1st Sess.

⁶ *Senate Documents*, Vol. XI, No. 99, 20th Cong., 1st Sess.

gress fixed Vandalia, then the capital of Illinois, as one of the points on the road. In 1830 the line was reported definitely located between Terre Haute and Vandalia;¹ but the commissioners on location selected no point for crossing the Mississippi in 1821. They thought the language of the law and the physical conditions of the country would probably designate some point just above the mouth of the Missouri. The matter was referred to the proper authorities, and a law was passed in 1825 which designated the seats of government, but left the point of crossing the Mississippi undecided.² In 1828 the commissioners made an examination of the line to St. Louis; thence to Jefferson City, in 1829, and surveyed back to Vandalia on the north side of the Missouri, crossing the Mississippi at Portage de Sioux.³ They estimated the cost of the northern route at \$11,200 less than the southern; but favored the commercial and military city of St. Louis⁴ as the crossing point.

A struggle which lasted for eighteen years was waged between Missouri and Illinois over the point at which the Cumberland Road should cross the Mississippi; Missouri stood for the St. Louis crossing; Illinois for the Alton.⁵ The Illinois legislature sent a memorial to Congress praying for the Alton crossing. It was pointed out that the act of 1820 called for a crossing "between St. Louis and the mouth of the Illinois." This clearly excluded St. Louis. The Missouri legislature replied with a counter-memorial. In this it was pointed out that the general government had never pulled down one town to build up another on its ruins; if the road should be located by Alton, the great western mail would be compelled to leave the road and plunge into the deep and often impassable route leading to St. Louis; this would leave the national highway for the accommodation of a mail which in all probability could always be carried on the back of a horse.⁶

In 1834 the legislature of Illinois returned to the attack with the following resolution:

Resolved, That the consent of the State of Illinois is hereby given to the Federal Government to extend the National Road through the territory of said state so as to cross the Mississippi river at the town of Alton in said state and at no other point.

Mr. Reynolds, one of the Illinois representatives of the House, defended the resolution. In the course of his remarks he said that

¹ *State Papers*, Vol. III, No. 59, 21st Cong., 1st Sess. ² *Ibid.* ³ *Ibid.* ⁴ *Ibid.*

⁵ This was largely a commercial struggle between St. Louis and Alton.

⁶ *Senate Documents*, Vol. II, No. 70, 21st Cong., 2d Sess.

Illinois was acting on the principle of state rights. No gentleman, he said, would vote for such an improvement as the National Road contrary to the express will of the state in which it was located. He thought the United States, owing to its constitutional authority over war, had power to make military roads, but no one pretended the National Road was a military road. Congress undoubtedly had the power to establish post-roads, but that did not include the power to make such a road as this one. The National Road was no more a post-route than a military road, and Congress had no right to force it on a state. If Congress had the power to make the road without the consent of the states through which it passed, it had the power to exercise jurisdiction over it—to establish courts and provide officers to enforce the acts of Congress. This would mean a consolidated government. The general government, according to Reynolds, acted under authority of the state governments. It was one of the delegated powers and, like any other agent, could not transcend the powers given. Continuing, Mr. Reynolds said that the act of 1806 provided for securing the consent of the states through which the road passed. Jefferson required the "full consent" of the states. This consent was given by Maryland, Pennsylvania, Virginia, Ohio, and Indiana. Congress had no power to act without the consent of the states; therefore the road must be located at Alton and at no other point. He further remarked that the people of Illinois did not wish to injure St. Louis, but simply wished to advance Alton and the interests of their own state. He adverted to the fact that at a recent election a vote was taken on the location of a permanent seat of government for Illinois. Alton had received more votes than any other town, and would certainly become the capital of the state. The past policy of the general government had been to locate the road through the capitals of the states; the same policy should be pursued with reference to Illinois.¹

The citizens of St. Louis sent a memorial praying for the road.² Surveys were again made both north and south of the Missouri.³ The Illinois legislature memorialized Congress to locate the road by Alton, and reiterated its right to give or withhold its consent for the construction of the road.⁴

On April 30, 1844, the Committee on Roads and Canals in the United States Senate reported a bill to extend the National Road⁵ from

¹ *Senate Documents*, Vol. II, pp. 1133, 1134.

² *Ibid.*, Vol. III, No. 196, 24th Cong., 1st Sess.

³ *Ibid.*

⁴ *Executive Documents*, Vol. IV., No. 127, 28th Cong., 1st Sess. In the West the Cumberland Road was known as the "National Road."

⁵ *Senate Documents*, Vol. II, No. 41, 28th Cong., 2d Sess.

Vandalia to Alton. Attention was called to the provisions of the act of 1806 which required the consent of the states through which the road would pass. The acts of the various states that had given consent were examined. The committee concluded that the United States could not exercise the right of eminent domain nor any jurisdiction over such a road within a state. The resolution of the Illinois legislature was quoted with approval. Again in 1845 the committee reported in favor of the Alton route, but the bill failed.¹ On January 16, 1847, the controversy between Illinois and Missouri made its last appearance in Congress. At this time the Senate Committee on Roads and Canals introduced a bill to locate the National Road from Vandalia to Alton. The bill carried no appropriation; it simply provided for settling the vexed question of location. The committee made its reports of 1844 and of 1845 the basis of this one. A letter from Senator Semple of Illinois accompanied the report.

Senator Semple first showed that the consent of the state was necessary before a final location could be made by Congress. He observed that unless the road were located to Alton, or the state of Illinois should abandon an undoubted right of withholding her consent, the road would never be completed to the Mississippi. He declared that the resolution passed by the Illinois legislature in 1834 was still in force, and would never be rescinded. Congress could not compel the state to yield by refusing to locate and construct the road west of Vandalia. He went into an extended history of the western country to show why St. Louis was larger than Alton; and charged Congress with spending millions for St. Louis and as constantly refusing to spend anything on Alton. There was no enmity between the two states, although one was slave and the other free; he only wished to see justice done. The question was never decided by Congress, and the road was not located west of Vandalia, Ill.²

2. *Construction and Administration.*—The President of the United States had general charge of the construction and administration of the Cumberland Road from first to last—1806 to 1856. He had authority to appoint a board of commissioners on location; to accept, reject, or modify their recommendations, being restricted only to the points on the road already located by law; to adopt such measures as he might deem wise in securing the consent of the states through which the road would pass; to use his judgment as to actual construction and

¹ *Senate Documents*, Vol. II, No. 41, 28th Cong., 2d Sess.

² *Ibid.*, No. 70, 29th Cong., 2d Sess.

administrative machinery, with unimportant exceptions; and finally to supervise the withdrawal and disbursement of money.¹ Under authority of later enactments, the President was authorized to appoint superintendents who were to have the direct or field supervision of construction. The President gave his attention only to the most important matters, intrusting most of the general supervisory work to the secretary of the treasury until 1828, when the secretary of war superseded him for direction of construction, and in 1831 for the disbursement of money.² In 1834 the field superintendence was placed in the hands of the Topographical Bureau of the War Department.³ This plan of using soldiers and military experts seems to have originated with Secretary of War J. C. Calhoun in 1819.⁴ The practice was actually commenced in 1824.

According to the first act of Congress, the road was to be cleared of timber to the width of four rods; raised in the middle with stone, earth, or gravel, leaving a ditch on either side; when finished, there was to be no angle greater than five degrees to the horizon. The manner of making the road in every other particular was left to the discretion of the President.⁵

Touching the general importance of the road, and the physical difficulties to be overcome in constructing such an improvement, the Senate committee said in 1806:

Politicians have generally agreed that rivers unite the interests and promote the friendship of those who inhabit their banks; while mountains, on the contrary, tend to disunion and estrangement of those who are separated by their intervention. In the present case, to make the crooked ways straight, and the rough ways smooth will in effect remove the intervening mountains, and by facilitating the intercourse of our Western brethren with those of the Atlantic, substantially unite them in interest, which the committee believe is the most effective cement of Union applicable to the human race.⁶

¹ *U. S. Statutes at Large*, Vol. II, p. 357.

² *Ibid.*, Vol. III, p. 728; also Vol. IV, pp. 128, 351, 469.

³ *Ibid.*, Vol. IV, p. 680.

⁴ *Miscellaneous State Papers*, Vol. II, p. 533.

⁵ *U. S. Statutes at Large*, Vol. II, p. 358.

⁶ *Miscellaneous State Papers*, Vol. I, p. 432.

The physical difficulties were also set out in detail by the commissioners on location. They reported the country very rough and broken by a succession of high mountains and deep hollows. The mountains, they said, must be crossed obliquely in order to reduce the road to an elevation of five degrees to the horizon. This would necessitate a resort to extensive hill-digging. The elevation of the main points as far as Brownsville, Pa., were reported as follows: Wills Mountain, 581 feet; Savage Mountain, 2,022; Pine Run, first western water, 1,699; Little Meadow Mountain, 2,026; Big Youghiogana River, 645; Laurel Hill, 1,550; courthouse in Uniontown, Pa., 274; a point ten feet above low-water mark in the Monongahela River, 119. The estimate for construction was \$6,000 per mile.

In 1808 the road was cleared one-half of its width from Cumberland, Md., to Brownsville, Pa.; but the first contract for construction was not let until May 8, 1811.¹ In 1813 ten miles of the road were finished and eleven were under contract. In 1814 the contract for the third letting was made. In 1816 the necessary work was finished to the Big Youghiogona River.² The total appropriations to 1823 were \$1,718,846.35. The expenditures amounted to \$1,645,679.20, distributed as follows: surveying and locating, \$29,144.25; construction, \$1,544,882.70; repairs, \$16,160.19; salaries to superintendents and assistants, \$53,034.61; miscellaneous, \$2,457.45.³ In 1827 the road was reported to have cost \$11,226.55 per mile from Cumberland to Brownsville—74 miles; and \$15,705.90 per mile from Brownsville to Wheeling—56 miles.⁴ The part of the road east of the Ohio was open for traffic to Wheeling in 1818; in 1835 the last appropriation was made for repairs; and July 4, 1838, the eastern part was entirely completed.⁵

The question of repairing the road and the levying of tolls by the United States gave rise to many debates on the constitutionality of the internal-improvement system. This phase of the subject is discussed in another connection. Before the first ten miles were finished, the superintendent of the road recommended a system of tolls to provide a fund for repairs, but thought this could only be done under authority of the state of Maryland.⁶ In 1815 Secretary of the Treasury Dallas reported the necessity of some system of repairs, and that Maryland had been urged to consent to them and would probably yield.⁷ A House committee on March 23, 1816, reported that Congress had the necessary power to preserve the road.⁸ In 1822 this culminated in an act for the preservation and repair of the Cumberland Road, which met with a veto from President Monroe.⁹ In 1823, as a result of the veto, a direct appropriation was made for repairs. This plan was followed for twelve years, when the road east of the Ohio was surrendered to the states through which it passed. By authority of the law, a superintendent of repairs was appointed.

In 1825, after an intense struggle in Congress, an appropriation was made for construction west of the Ohio. On July 4, 1825, a great celebration in honor of the breaking of the first ground was held at St. Clairsville, Ohio. Prayer was offered, the Declaration of Indepen-

¹ *Miscellaneous State Papers*, Vol. II, p. 175.

² *Ibid.*, p. 182. ³ *Ibid.*, Vol. V, No. 77, 17th Cong., 2d Sess.

⁴ *Senate Documents*, Vol. II, No. 14, 19th Cong., 2d Sess.

⁵ *Ibid.*, Vol. I, No. 1, p. 171, 26th Cong., 1st Sess.

⁶ *Miscellaneous State Papers*, Vol II, p. 175.

⁷ *Ibid.*, p. 272.

⁸ *Ibid.*, p. 300.

⁹ *Messages and Papers of the Presidents*, Vol. II, p. 142.

dence read, and an oration delivered. In this oration it was pointed out that the road was destined to reach the Rocky Mountains. The celebration ended with a brilliant banquet, honored by the presence of the President and Vice-President of the United States.¹

The appropriation in 1825 provided only for construction as far as Zanesville and for a survey to Jefferson City, Mo. Every subsequent year to and including 1838 Ohio received appropriations—the smallest \$100,000, the largest \$200,000, the total being \$2,081,008.36. The road from St. Clairsville to Zanesville followed the old Zane's Trace authorized as far back as 1796. The average cost of the road per mile in Ohio was \$3,400. West of Zanesville the road went through a frontier country. The land either had belonged to or at that time belonged to the United States. In 1833 the road was completed to Columbus, but was never completed by the United States west of Springfield.² Appropriations for the road in Indiana began in 1829 and closed in 1838. The total sum appropriated was \$1,135,000. The road was grubbed, graded, and bridged; but only a few miles finished at Richmond, Indianapolis, Centerville, and Terre Haute. The plan of the federal government had been to make the road continuous; but the western states complained that, at the slow rate of construction, they were enjoying no immediate benefits. In deference to the wishes of Indiana and Illinois, the continuity of the road was broken, and Indianapolis became the center of activity—the road being built eastward and westward from that point.

In 1830 construction began in Illinois. Appropriations were made every year from 1830 to 1838—in all \$746,000. The road was located only to Vandalia. Railroads were being built in the West; constitutional objections stood in the way; the road was surrendered to states east of the Ohio in 1835; and Illinois and Missouri were quarreling over the question of the best place for the road to cross the Mississippi; hence federal aid was withdrawn, and the road finally surrendered to Illinois in 1856.³

Appropriations for the Cumberland Road were usually made under the fiction of "advances" from the federal treasury, reimbursable from the "2 per cent. fund," and were special in most cases. In 1813 and 1816 they were included in the general appropriation bill. In 1819 the "2 per cent. fund" arising from "compacts" concerning land sales

¹ *Niles Register*, Vol. XXVIII, July 23, 1825.

² This was due to the fight on location. See p. 25. A private turnpike was built from Springfield to Richmond via Dayton and Eaton.

³ For discussion of surrender see pp. 78-104.

of Ohio, Indiana, and Illinois was pledged, but not without objection from the last two states. In 1820 the appropriation for a survey was to be paid out of the treasury, and was not reimbursable from the road fund proper. As a rule, the appropriations for *repairs* were out of any money "not otherwise appropriated," and not reimbursable. Appropriations for construction west of the Ohio were "advances" reimbursable from the "2 per cent. fund" of lands sold in Ohio, Indiana, Illinois, and Missouri, although the road never reached the latter state. Sometimes these appropriations were called special, sometimes general, or military, and once (1830) "internal improvements;" but there was an effort made to keep this road distinct from the so-called "American system." Once the appropriation was designated "repair of roads," and the last one (1844) was in the "civil and diplomatic" appropriations. This was six years after the last regular appropriations were made, and was for an arrearage on the survey to Jefferson City. The above statement shows considerable fertility of resource on the part of the supporters of the road. Some words are prominent: "advances," "compacts," "2 per cent fund," and "reimbursable."

As soon as the Cumberland Road was surrendered to the states, arrangements were made for keeping it in repair either by tolls, as in Ohio, Virginia, Pennsylvania, and Maryland, or by state aid, as in Indiana and Illinois.

In Maryland the road was managed by persons appointed by the governor of the state. There was much political corruption connected with the administration of these appointees, until the road was turned over to the counties. It is now (1902) free of toll.¹

On April 11, 1831, Pennsylvania authorized the erection of six toll-gates to raise a fund to keep the road in repair. In 1847 two commissioners were appointed by the governor of the state, one to act east of the Monongahela and the other west.² This law is still in force. Private letters to the writer indicate that the road is in bad condition in many places, as the tolls are not sufficient to keep it in repair. The state grants no money; it only exercises a general supervisory control. West Virginia has two toll gates for its twelve miles of the road.

The United States never appropriated for repairs in Ohio, as the road was practically surrendered to the state in 1831.³ In 1836 it passed under the control of the state board of public works. Special commissioners had a general oversight in auditing tolls and settling

¹SCARFE, *History of Maryland*, Vol. II, p. 1331.

² *Laws of Pennsylvania* (pamphlet), pp. 419, 477.

³ See p. 79.

accounts. Two patrolling engineers reported quarterly concerning the condition of the road.¹ The dividing line at one time between the eastern and western divisions was at the eighty-seventh mile post west of Wheeling.² Later the road was parceled out into as many divisions as there were counties through which it passed. In 1850 Ohio leased parts of the road to private companies; and four years later the part completed from the Ohio River to Springfield was leased for ten years for \$6,105 a year.³ These lessees were relieved of a bad contract by the state in 1859.⁴ In 1870 the state legislature designated the proper width of the road as eighty feet; but where it passed through a city it was to be the width of the street; and cities might own the road so long as they kept it in repair.⁵ In 1876 county commissioners were authorized to take under their control so much of the road as lay within their respective counties. The unfinished part from Springfield to the Indiana state line was finished by the counties.⁶ In 1877 a law authorized counties having a sufficient population to make the road free by a majority vote, provided the consent of Congress had been obtained.⁷ The road is now free in all the Ohio counties except Franklin. It is supported by county taxes, expended under the direction of the county commissioners.

The road was completed in Wayne county, Ind. in 1827, and turned over to different corporations for operation in 1849. A state law reserved to Congress the ownership and control of the road by Congressional reimbursement to the company for expenditures;⁸ but Congress made a complete surrender of all its interests.⁹ The road since 1893 has been a part of the free gravel road system, having been purchased from the private companies by the townships through which it passes. It is kept in repair by local taxation and road work.¹⁰

In Illinois the road was never located west of Vandalia, only thirty of the ninety miles from the state line to Vandalia being entirely completed. The bridge over the Kaskaskia was the last work done in Illinois. The road is now owned and supported by the townships through which it runs. Tolls were never charged.

A brief summary at this point may be useful: (1) The water courses were used as means of communication by the early colonists. (2)

¹ *Laws of Ohio*, Vol. XXXIV, p. 41.

² *Ibid.*, Vol. XLIII, p. 89.

³ HULBERT, *The National Road*, p. 456.

⁴ *Ibid.*

⁵ *Laws of Ohio*, Vol. LII, p. 126.

⁶ *Ibid.*, Vol. LXXIII, p. 105.

⁷ *Ibid.*, Vol. LXXIV, p. 62.

⁸ SEARIGHT, *Old Pike*, p. 304.

⁹ See p. 97.

¹⁰ *Old Pike*, p. 309.

These were gradually supplemented by post-routes and by military routes opened to the West. (3) The settlement of the West called for a better system of land transportation, which was partially furnished by the Wilderness Road and additional, although imperfect, post-traces. (4) The commercial and political difficulties of the East and the West have been detailed, with a glance at the attitude of Washington and Jefferson toward the early system of internal improvements. (5) As pointed out, early road-making was left largely to private initiative, which sometimes found expression in the formation of private state corporations, with power to exercise the right of eminent domain and to charge tolls. (6) Again, a few states, as Pennsylvania and Virginia, undertook roads to the West, to enhance the value of their respective lands, and for increasing the commercial supremacy of certain cities. (7) All these efforts proving ineffectual, a resort was made to "compacts" between the United States and the individual states most interested, which furnished a "2 per cent. fund," derived from sales of public lands anticipated in every case by "advances" for a road. (8) The political forces brought into action on the question of location have been discussed. (9) And, finally, a brief statement on construction and the administration of the Cumberland Road closed the treatment of this part of the study.

The more strictly constitutional phases of the subject will be developed in the succeeding pages.

IV. PRELIMINARY CONSTITUTIONAL CONSIDERATIONS.

1. *The Constitution and the "Compacts."*—The prominent place occupied by internal improvements at the close of the eighteenth century and the beginning of the nineteenth century has been pointed out. An important question is: What was the attitude of the constitutional fathers and of the Constitution itself toward the subject?

Before the adoption of the Constitution the states were commercially and politically somewhat independent. Narrow state-rights views at first held the states apart because of bickerings and petty jealousies; but these difficulties finally brought the states together in the formation of "a more perfect union." The states at various times were asked to grant to the Confederate Congress commercial powers, if only for a limited time. This was not done; but the agitation led to a conference between the states of Maryland and Virginia over a commercial or transportation question, which, in turn, led to the calling of the Annapolis Convention—the immediate forerunner of the Philadelphia Convention and the federal Constitution. It is thus seen that commercial union is the fruitful idea which resulted in political union.

The material for a discussion of the internal-improvement question in the Constitutional Convention is scanty, yet important. When dealing with the powers of Congress (Art. I, sec. 8), Franklin moved, seconded by Wilson, to add, after the words "post-roads," a power "to provide for cutting canals where deemed necessary." Sherman objected, on the ground that the expense would fall on the United States and the benefit accrue to the place where the canals would be cut. Wilson replied that, instead of being an expense, they might prove a source of revenue; that it would prevent a state from obstructing the general welfare, and would provide a means of reaching the western settlements. Madison and Randolph were in favor of some power that would secure easy communication between the states, since free trade had been guaranteed to them. The vote on Franklin's motion was 3 to 8, the states voting in the affirmative being Pennsylvania, Virginia, and Georgia.¹

The same general question appeared in a slightly different form. After the convention had decided to grant to Congress the power to regulate commerce, a proposition was made that no state should be restrained

¹ MADISON'S *Journal of the Federal Convention*, pp. 725, 726.

from levying duties of tonnage for purposes of clearing harbors erecting light houses.¹ It was suggested that this was too strict limitation as to the purpose for which such revenue might be used. As a result, the clause was changed to read: "No state shall without the consent of Congress lay any duty of tonnage."² Now, it must be remembered that the convention had already decided that a state might, without the consent of Congress, lay imposts or duties on exports and imports not exceeding in sum no greater than was "absolutely necessary" for executing inspection laws.³ These differences in policy show: (1) that they might, without the consent of Congress, levy duties for inspection purposes; (2) that they might, with the consent of Congress, levy tonnage duties. In the draft, as originally proposed, there was a constitutional restriction as to the purpose of such a levy for tonnage duties, while in the final draft for the Constitution there is no restriction as to purposes, only one requiring congressional assent. The inference is clear that the Constitution intended that the states should raise an internal-improvement fund by means of tonnage duties laid with the consent of Congress. This view is confirmed by the fact that the political branches of the federal government for many years have been in the hands of persons who participated in the work of the convention. This policy of the state tonnage duties with congressional consent was commenced by Maryland in 1790, and was not abolished by that state until 1850. Other states did likewise; Congress gave its consent to such state acts thirty-four different times.⁴ It was not until 1823 that the first river and harbor bill was passed by Congress.⁵

It is claimed by some that because internal improvements occupied so large a place in the public mind the Constitution surely granted power to the federal government. No. 14 of the *Federalist* is sometimes quoted to justify such a claim. In this number Madison says:

Let it be remembered . . . that the intercourse throughout the country will be daily facilitated by new improvements. Roads will be everywhere shortened and kept in better order. The communications between the western and the Atlantic districts and the different parts of each will be rendered more easy by those numerous canals with which the beneficent nature has intersected our country, and which art finds it so little difficult to connect and complete.

It must be kept in mind that Madison was replying to the objection that this country was too large for a federal republic. He was arguing that it was not.

¹ ELLIOT'S *Debates*, Vol. I, p. 313.

² Art. I, sec. 10, par. 3.

³ Art. I, sec. 10, par. 2.

⁴ LALOR, *Cyclopedia of Political Science*, Vol. II, p. 1.

⁵ *Ibid.*

the invalidity of the objection. Nowhere did he say that these improvements should be undertaken by the federal government. This would have been fatal to the plea he was making, namely, ratification of the Constitution; and the greatest objection to the Constitution was the delegation of too large powers to the federal government. Further, there is nothing in the quotation or context to show that Madison meant more than that these improvements would be made by private individuals, companies, or states themselves. Finally, it must be remembered that Madison favored such a power in the Constitutional Convention, but was defeated; also, that his understanding of the Constitution would not allow him when president to sign the "Bonus Bill" which provided a federal fund for internal improvements.

It is clear that the attitude of the Constitution, as understood by those who framed it, was opposed to a federal fund for internal improvements. Such a fund was to be raised in the states by means of tonnage duties. This was a shortsighted policy, as it had for its fundamental assumption that the states all had seacoasts; but the Constitution no sooner went into effect than Vermont, Kentucky, and Tennessee were admitted to the Union, and a territorial form of government was formulated for the Northwest, providing for admission at no distant day. These states and this territory were strictly inland; hence they could not provide an internal-improvement fund from tonnage duties. The inland states claimed that they were helping to pay tonnage duties by way of additional price on consumption to provide an internal-improvement fund for the eastern or seaboard states. Herein is found the internal-improvement text of congressmen from the inland states.

It must not be understood that the federal government made no direct appropriations for improvements. The complaint was that the improvements were restricted to the coast for lighthouses, beacons, bouys, public piers, etc. They wholly neglected interstate commerce. Again, as a prerequisite for these appropriations the states were required to cede the sites. This cession carried with it jurisdiction over the sites.

When Jefferson came to the presidential chair, the general clamor for improvements not wholly restricted to the seaboard was at its height. The West was making its wants known. But the close-construction theory of the Constitution would not allow federal appropriations for an internal-improvement system, unless the Constitution were amended. Jefferson, in his second inaugural, after congratulating the people on the fact that the national debt would soon be paid, said:

The revenue thereby liberated may, by a just repartition among the states and a corresponding amendment to the Constitution, be applied, in time of peace, to rivers, canals, and roads. . . . In time of war, it may meet expenses within the year, without encroaching on the rights of future generations.¹

But representatives from the new states and the friends of internal improvements were not strong enough to pass such an amendment. The New England states (1796) even opposed an appropriation for inspecting a post-road from Maine to Georgia.²

The opposition of New England and the inability to secure an amendment to the Constitution led to the fiction of "compacts," pledging part of the public domain in return for exemption from state taxation. The "compact" was in the nature of a *quid pro quo* on the admission of new states: the new states admitted were to secure a road; the United States was to have its lands exempted from state taxation for five years.

2. *Eminent Domain*.—The act of Congress in 1806 fixed only two points on the Cumberland Road—Cumberland on the Potomac and Wheeling on the Ohio. This immediately presented the question of the constitutional authority of the United States to lay out and construct a road through the territory of Maryland, Pennsylvania, and Virginia. In other words, had the United States the authority to exercise the right of eminent domain within the territory of a state? The treatment of eminent domain in connection with the early internal improvements is an interesting subject, as eminent domain is one of the great powers of sovereignty. The right of the United States to exercise this power was denied by the states as an infringement on their sovereignty; therefore the practice in most cases was for the United States to exercise the right with the consent of the states, and by means of state methods and officers.

In 1803 the legislature of Maryland authorized Congress to improve post-roads within the state, under the following limitation:

Provided also that nothing herein contained shall extend to authorize Congress to cut down or use the timber or other material of any person or persons against his, her, or their consent.³

Since this was the prevailing view, the act of 1806 providing for the Cumberland Road empowered the President, after accepting the report of the commissioners on location, "to pursue such measures as he deems proper in obtaining the *consent of the states* through which the road

¹ RICHARDSON (editor), *Messages and Papers of the Presidents*, Vol. I, p. 379.

² HILDRETH, Vol. IV, p. 629.

³ *Laws of Maryland*, 1802-4, chap. 115.

may pass ; and, having obtained their consent, he is further authorized to take measures in having the road promptly made through the whole distance." Jefferson promptly secured consent from Maryland and Virginia. Pennsylvania wished to dictate the location of the road through certain points, and did not give her consent until late in 1807. On January 31, 1807, Jefferson, transmitting the report of the commissioners on location to Congress, observed that the Pennsylvania legislature still had the matter under consideration. He also added :

Until I receive *full consent* to a free choice of route through the whole distance, I have thought it safest neither to accept nor reject finally the partial report of the commissioners.¹

This "*full consent*," with the suggestion as to location, was received by the President soon after.² A quotation is here given from the act of the Pennsylvania legislature, to show how the United States in the construction of the road was to exercise the right of eminent domain. After granting consent for the location of the road through Pennsylvania, the act added :

Such person or persons as are or shall be appointed for the purpose of laying out and completing the said road, under authority of the United States, shall have full power and authority to enter the lands through which the same may pass, or upon any land near by or adjacent thereto, and therefrom to take, dig, cut, and carry away such materials of gravel, stone, earth, timber, and sand as may be necessary for the purpose of completing, and for keeping in repair, said road: Provided, that such materials shall be valued and appraised in *the same manner as materials taken for similar purposes*, under authority of this commonwealth, are by *the laws thereof*, directed to be valued and appraised, and a certificate of the amount thereof, by the person or persons appointed, or hereafter to be appointed, under the authority of the United States for the purpose aforesaid, be delivered to each party entitled thereto, for any materials to be taken by virtue of this act, to entitle him, her, or them to receive payment therefor from the United States.³

The acts of Virginia and Maryland were of the same character.

There was a tendency to break away from this conception of eminent domain because of the nationalizing tendencies which followed the War of 1812. Clay in 1818, discussing the subject, said that the federal government had the constitutional power to construct roads in the states without the consent of the states ; to exercise the right of eminent domain ;

¹ *Miscellaneous State Papers*, Vol. 1, p. 474.

² See p. 22.

³ *Laws of Pennsylvania*, 1806-7, chap. 113, p. 185.

to fell the oak of the mountain, to gather the stone which has slept for centuries useless in its bosom, with the qualification which the constitution has provided in one of its amendments, that when the [federal] Government takes private property it is bound to make compensation therefor.¹

Mr. Cushman, of New York, said that the states and United States had a concurrent jurisdiction, which entitled each to make roads, and even to seize private property for such purposes, but not without paying an equivalent. He claimed that only an emergency would justify such an act, and the necessity would be determined by the government itself. He stated that the fifth amendment expressly recognized and qualified the right of Congress to exercise the right of eminent domain when necessary, in providing as follows: "Private property shall not be taken for public use without just compensation."² Mr. Austin, of Virginia, said that this amendment meant to apply to those cases in time of war when the property of an individual had been destroyed for public purposes or taken temporarily for public use.³ Mr. Lowndes, of South Carolina, replying said that the general government could take private property for public purposes by making just compensation; that this power was not restricted to the taking of personal property. He said it was admitted that the states could make roads and canals and exercise the right of eminent domain as an incident of sovereignty; that, by parity of reasoning, the United States could do the same, as it also was sovereign.⁴ As a result of this debate, the committee of the whole in the House recommended resolutions affirming that the United States had power to exercise the right of eminent domain; but the recommendation was not adopted.⁵

This ineffective attempt to break away from the idea of state sovereignty in exercising the right of eminent domain was not repeated in connection with the Cumberland Road, although there is a slight analogy in the "gate bill of 1822." Monroe, vetoing this bill, said:

Whatever the United States have done has, on the contrary, been founded on the opposite principle, on the voluntary and unqualified admission that the sovereignty belonged to the state and not to the United States, and that they [the United States] could perform no act which should tend to weaken the power of the state or to assume any to themselves.⁶

This same opinion touching the power of the United States to exercise the right of eminent domain prevailed in 1833, when Mary-

¹ *Annals of Congress*, 15th Cong., 1st Sess., Vol. I, p. 1,169.

² *Ibid.*, p. 1193.

³ *Ibid.*, p. 1169.

⁴ *Ibid.*, p. 1243.

⁵ See p. 62.

⁶ *Messages and Papers of the Presidents*, Vol. II, p. 170.

land, in giving authority to Congress to make a slight change in the Cumberland Road at Will's Creek, provided :

The President of the United States, or such person or persons as may be appointed by him, shall have power and authority to purchase and contract for all materials necessary in repairing any part of said National Road within the limits of this state, and the same to condemn, if refused, by the course of proceedings provided for in the second section of this act.¹

The section referred to provided in an elaborate way for a jury of Maryland citizens who should sit in judgment on the value of the materials expropriated. The reports of the commissioners on location bear testimony to the fact that all communities that had any prospect of securing the road were anxious for its location. Owners of land and materials were, as a rule, eager to do everything in their power to assist in the construction of this improvement. Only one man in the history of the construction of this road east of the Ohio refused to co-operate with the government in the appointment of appraisers. He petitioned Congress three times for relief. Each time the committee reported adversely. He finally carried the matter to his own state, Virginia; but his petition for relief was denied.²

When the road was finished to the Ohio River, it reached states in which the United States owned land—the states carved from the public domain. Accordingly, the act which authorized the extension of the road westward from the Ohio River reserved from sale so much of the public lands as was included in the right of way.³ In this way the question of eminent domain did not become a troublesome one in these states until Illinois asserted her state-rights doctrine on location in 1834.

Some practices of the United States government, beginning with 1806, may seem to be at variance with the policy pursued with reference to the Cumberland Road. The same Congress that authorized the construction of the Cumberland Road, *with the consent* of the states through which it passed, also authorized the President, *without the consent* of the states immediately concerned, to lay out roads from (1) the frontiers of Georgia to New Orleans; (2) the Mississippi to the Ohio and the former Indian boundary line established by the Treaty of Greenville; (3) Nashville, Tenn., to Natchez, Miss.⁴ But there are some facts which throw light on this seeming exception to the general

¹ *Laws of Maryland*, 1831-32, chap. 55.

³ *U. S. Statutes at Large*, Vol. III, p. 604.

² CHAMBERS, *The Old National Road*, p. 106.

⁴ *Ibid.*, Vol. II, p. 397.

policy outlined above. On February 9, 1815, a Committee on the Repair of Roads brought in a report which said:

It appears by a treaty concluded with the Chickasaws of the 24th of October, 1801, and another with the Choctaws on the 17th of December in the same year, that the consent¹ of these Indians was obtained to the opening of a wagon road through their respective lands, and by an act of Congress of the 21st of April, 1806, that the sum of \$6,000 was appropriated to this purpose, which was effected as was provided by these treaties and this act under the direction of the President of the United States. It appears also by a treaty² with the Creek Indians concluded on the 14th of November, 1805, that the United States have a right to a horse path through their lands, and by the act above mentioned, that \$6,000 were appropriated for the purpose of opening a road from the frontier of Georgia on the route from Athens to New Orleans as far as the thirty-first degree of north latitude.³

It is seen from the above that these roads were laid out with the consent of the Indians—a consent given by solemn treaty. This illustrates the policy of the United States in considering the Indian tribes as in some senses foreign nations, in spite of the fact that they resided within the territorial limits of some of the states.⁴ These roads were on the frontier, and the question of expropriating land from private owners could hardly become a serious one.

But the United States did enter the territory of the states without their consent, and either repair or construct both postal and military roads. This was done in 1812,⁵ in 1816,⁶ in 1823,⁷ in 1826,⁸ and in 1829.⁹ However, a careful examination of the acts authorizing these repairs and constructions shows that the United States was not authorized to exercise the right of eminent domain. The routes were military, and were on the frontier where it was necessary to take very little private property. Besides, private owners gladly co-operated with the United States government in all such works, as they were anxious for the protection and benefits. On the other hand, the routes passed in many cases through territory in which the United States owned the lands, and no one denied the right of the United States to construct roads through lands in a territory.¹⁰ Such powers as the

¹ *U. S. Statutes at Large*, Vol. VII ("Indian Treaties"), p. 66.

² *Ibid.*, p. 96. ³ *Reports of Committees*, 13th Cong., 3d Sess., pp. 61-63.

⁴ This view was modified in 1828.

⁷ *Ibid.*, Vol. IV, p. 190.

⁵ *Annals*, 7th Cong., 1st Sess., Vol. II, p. 1844.

⁸ *Ibid.*, p. 154.

⁶ *U. S. Statutes at Large*, Vol. III, p. 315.

⁹ *Annals*, 19th Cong., 1st Sess., Vol. II, p. 369.

¹⁰ Power of the United States to exercise the right of eminent domain in the territories may be sought in *U. S. Statutes at Large*, Vol. IX, p. 439; opinions of attorney-general, *ibid.*, Vol. VII, p. 320; *Cherokee Nation vs. Kansas Railroad Co.*, 135 U. S., p. 641.

United States exercised were not seriously contested by private individuals, as no cases were brought to issue before the courts prior to the Civil War. These acts are cited to show that the policy of the United States in constructing roads with or without the consent of the states through whose territory they passed is the policy that was pursued with reference to the Cumberland Road. This policy becomes stronger in the thirties and forties, as the state-rights theory of sovereignty became more prominent. It is well illustrated in the treatment of the Cumberland Road question in Illinois.

The contest between Illinois and Missouri already detailed¹ showed Illinois and the congressmen of the day fully imbued with the state-rights theory of sovereignty. The struggle between these two states was over the question whether the Cumberland Road should cross the Mississippi at St. Louis or at Alton. This struggle became so intense that the Illinois legislature passed the following resolution in 1834:

Resolved, That the *consent* of the state of Illinois is hereby given to the Federal Government to extend the National Road through the territory of the said state so as to cross the Mississippi River at the town of Alton and at no other point.²

Mr. Reynolds, Illinois's representative in the House of Representatives, defended the resolution. He said that Illinois was acting on the principle of state rights. No gentleman, he said, would vote for such an important improvement as the National Road contrary to the expressed will of the state in which it was located. If Congress had such power, this meant that the government of the United States was a consolidated government, which was contrary to the Constitution. He showed that the consent of every state through which the road passed had been asked and granted. According to Reynolds, Congress had no power to act without the consent of the state of Illinois. Therefore, if the road was located at all, it must be at Alton.³

In 1844 the Illinois legislature memorialized Congress to extend the road to Alton, and reiterated its undoubted right to give or withhold its consent for the continuation of the road.⁴ The committee called attention to the fact that the act of 1806 required the consent of the states through which the road passed. After examining the Virginia act which permitted the road to pass through her territory, the committee called attention to the fact that Virginia had specifically declared that the road could be constructed only with the consent of

¹ See p. 28.

² *Congressional Debates*, 24th Cong., 2d Sess., Vol. XIII, p. 1132.

³ *Ibid.*, Part I, pp. 1133, 1134.

⁴ *Senate Documents*, Vol. III, No. 196, 24th Cong., 1st Sess.

the state, and that something more than mere consent was necessary to authorize the United States to exercise the right of eminent domain. This could be done only by the sovereign state—under authority of state law and by state officers. This method was approved by the committee. It quoted with approval the resolution of the Illinois legislature in 1834, and suggested that the contention of a sovereign state like Illinois was well taken.¹ Again in 1845 this report was brought forward in the Senate,² but the bill to locate the road failed. January 16, 1847, the state-rights contention of Illinois made its last appearance in the Senate. The Senate Committee on Roads and Canals recommended that the road be located to Alton. The resolution of the Illinois legislature in 1834, together with the committee's report of 1844 and 1845, was made the basis of this report.

Senator Semple, of Illinois, in his letter to the committee declared the consent of Illinois necessary to the location of the road; that the resolution of 1834 was still in force and would never be rescinded; that the state of Illinois would not be coerced by the United States; that she would not yield simply because Congress refused to construct the road west of Vandalia. The committee was in full sympathy with the Illinois contention. Congress did not adopt the recommendation of the committee to locate the road to Alton. This was not simply because Congress was opposed to the Illinois doctrine of state consent and eminent domain, but because railroads were superseding wagon roads, and because of constitutional objection against carrying on internal improvements of this character after the road had been surrendered to the states of Maryland, Pennsylvania, Virginia, and Ohio in the thirties.³ It is clear that the Illinois doctrine of eminent domain had much to do with defeating the extension of the road west of Vandalia. Had she not passed the resolution of 1834, in all probability the road would have been located to the Mississippi River, and then to Jefferson City, thus completing the original compact. Her policy was one of dictation and obstruction, until the temper of Congress was against the further extension of the road.

This discussion of the right of the United States to construct roads within the territory of the states reveals a consistent attitude. It was done only with the consent of the states through which the road passed.

¹ *Senate Documents*, Vol. V, No. 324, 28th Cong., 1st Sess.

² *Ibid.*, Vol. II, No. 41, 28th Cong., 2d Sess.

³ *Ibid.*, Vol. II, No. 70, 29th Cong., 2d Sess.

The discussions at the close of the Cumberland Road period (1847) show the states even more determined in their state-right views than in 1806. The continuation of the road west of Vandalia was really determined on this point.¹

¹This doctrine has been superseded since the Civil War. See (1) *U. S. Statutes at Large*, Vol. XV, p. 124; (2) *Congressional Globe*, 40th Cong., 2d Sess., Part I, p. 69; (3) *Laws of Iowa*, 1868, Chap. 7, p. 6; (4) *Kohl vs. United States*, 91 U. S. 367; *First Supplement, Revised Statutes of the United States*, p. 601.

V. ATTEMPTS TO BROADEN THE INTERNAL-IMPROVEMENT POLICY.

No sooner was the "compact" theory of the Cumberland Road adopted than efforts were made to broaden the plan. President Jefferson was a warm advocate of internal improvements; but he thought Congress did not have authority under the Constitution to inaugurate such a policy, hence his suggestion of an amendment. The war debt was almost liquidated, and a large surplus was accumulating in the federal treasury. In 1807 a senator from Ohio secured the passage of a resolution requesting Gallatin, Jefferson's able secretary of the treasury, to submit a national plan of internal improvements.¹

In response to the Senate resolution, Gallatin submitted his famous report of April 6, 1808, taking one year for its preparation. This able financier was the father of the "2 per cent. fund" for the Cumberland Road, and this report was only a step in advance. He first dealt with the subject of coastwise canals and roads to bind the North and the South together. Next he advocated the construction of four great roads over the Alleghany Mountains to connect the eastern and the western waters. He estimated that this system of improvements would cost \$20,000,000; but the surplus in the treasury was accumulating at the rate of \$5,000,000 a year; therefore he recommended that \$2,000,000 a year be set aside for ten years, or that the sales of more public lands be devoted to defraying the expenses of this comprehensive internal-improvement system.²

As to the manner of applying public aid to these improvements Gallatin said :

It is evident that the United States cannot under the Constitution open any road or canal without the consent of the state through which such road or canal must pass. In order, therefore, to remove every impediment to a National plan of internal improvements, an amendment to the Constitution was suggested by the executive when the subject was recommended to the consideration of Congress. Until this be obtained, the assent of the States being necessary for each improvement, the modifications under which that assent may be given will necessarily control the manner of applying the money. . . . The moneys may be applied in two different manners. The United States may, with the assent of the states, undertake some of the works

¹ McMASTER, *History of the United States*, Vol. III, p. 473.

² *Miscellaneous State Papers*, Vol. I, p. 724.

at their sole expense, or they may subscribe a certain number of shares of stock in companies incorporated for the purpose. Loans might also, in some instances, be made to such companies. . . . At present the only work undertaken by the United States at their sole expense, and to which the assent of the states has been obtained, is the road from Cumberland to Brownsville; an appropriation may, for that purpose, be made at any time. In relation to all other works, the United States have nothing at this time in their power but to assist those already authorized, either by loans or by becoming stockholders and the last mode appears the most eligible.¹

Had Gallatin not taken a year for the preparation of this report, it might have received a kind reception and prompt action in putting its recommendations into effect. But the report was made three months after the embargo was laid. The surplus in the treasury was thereby threatened; therefore the general plan of internal improvements was not inaugurated in 1808.

Gallatin's plans were: (1) an amendment authorizing Congress to enter upon internal improvements; (2) an appropriation for the construction of the Cumberland Road, which had already been assented to; (3) a system of loans to companies incorporated for internal-improvement purposes; (4) the purchase of stock of internal-improvement companies. Of these only the second, relating to the construction of the Cumberland Road, could be acted on, because (1) the amendment could not be secured; (2) the surplus in the treasury could not be counted on; (3) the United States was already committed to the construction by means of the "compact" with Ohio; (4) there was a land fund slowly accumulating in the treasury for road purposes, and "advances" might be made from the treasury reimbursable from this fund. So internal improvements must continue to be made under this fiction.

The first appropriation for the road had been made two years before. The next one was not made until 1810. Hard times had set in and the surplus in the treasury had melted away. The appropriations for the Cumberland Road after the first appropriation in 1806 were as follows:

1810	-	-	-	-	-	\$ 60,000
1811	-	-	-	-	-	50,000
1812	-	-	-	-	-	30,000
1813	-	-	-	-	-	140,000
1815	-	-	-	-	-	100,000
Total	-	-	-	-	-	\$380,000

¹*Miscellaneous State Papers*, Vol. I, p. 741.

The contract for the first ten miles was let in 1811, but the work progressed slowly. As the construction was proving twice as expensive as had been estimated at first, and as the national resources were used for sinews of war, the outlook for the road became discouraging. But with the close of the war a real feeling of national pride took possession of the American people, who realized that they were now for the first time cut loose from European dependence. Naturally the desire for internal-improvements shared in this renaissance. The war had taught the need of military roads and a system of internal communication for the movement of troops and products. In 1816 the appropriation for the Cumberland Road was \$300,000. Nor was this the only manifestation of the internal-improvement spirit. Certain forces were at work for a general advance. The close constructionists had been in office since the election of Jefferson, but they in practice had adopted many of the loose constructionist policies of the Federalists: (1) an embargo had been laid; (2) Louisiana had been purchased (1803) and a new state carved from its territory (1812); (3) the state militia had been called out by the President against the wishes of some states; (4) a high protective tariff had been passed; (5) a United States bank had been chartered.

In return for the charter the bank was to pay the United States \$1,500,000; also annual dividends on the stock held by the United States. The sums appropriated for the Cumberland Road in the way of "advances" amounted in 1816 to \$410,000, but in this year the annual appropriation was \$300,000. Visions of large improvements appeared before the statesmen of the day. The bonus from the United States bank promised a large fund; and it was proposed to use it for internal improvements. A second attempt to broaden the internal-improvement policy by abandoning the compact theory on admission of states was to be made.

The supporters of the "bonus bill" had much to hope from the President. He had approved bills for a national bank and for a tariff for the protection of American industries, and had in a formal way brought to the attention of Congress the subject of internal improvements. In his annual message of December 5, 1815, he urged the importance of establishing throughout the country the "roads and canals which can best be executed under national authority." He thought the economic and political results of such improvements would be very wholesome; but declared "it a happy reflection that any defect of constitutional authority which may be encountered can be supplied in a

mode which the Constitution itself has providently pointed out.¹ Again, in the annual message of December 3, 1816, Madison said :

And I particularly invite again their attention to the expediency of exercising their existing powers, and, where necessary, of resorting to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals, such as will have the effect of drawing more closely together every part of our country.²

Both these recommendations strongly favor internal-improvements at national expense ; but they also point out that a constitutional amendment is necessary. However, inasmuch as the bank bill and tariff measures had received executive approval, it was hoped the "bonus bill" would fare likewise.

The bill was introduced in the House on the recommendation of a special committee, of which Calhoun was chairman. It provided for setting aside the bonus given for the charter of the United States Bank, and the dividend arising from the shares held by the United States ; thus establishing a permanent fund to be administered under the direction of the secretary of the treasury. The fund was to be applied by Congress to the construction of roads and canals in each state, with the consent of the states. These improvements were to be such as would "conduce to the general welfare." The apportionment of a state was in proportion to its representation in the House, and might be applied in any other state with the first state's consent.³

Mr. Calhoun, in defending this bill, advanced doctrines strongly national in their character. He pointed out the economic advantages of a system of internal-improvements, and suggested that then was the opportune time to pass the bill, as the people were at peace, and were turning their attention to questions of national importance. This might well be done, because the resources would accumulate rapidly for the purpose. He pointed out the lack of military roads during the War of 1812, and passed to the great extent of our country, the growth of population, and the danger of disunion growing out of such conditions.

We are great and rapidly—I was about to say fearfully—growing. This is our pride and danger—our weakness and our strength. . . . What-ever impedes the intercourse of the extremes with this center of the Republic weakens the Union. Let us then bind the Republic together with a perfect system of roads and canals. Let us conquer space.

¹ *Messages and Papers of the Presidents*, Vol. I, p. 567.

² *Ibid.*, p. 576.

³ *Annals*, 14th Cong., 2d Sess., p. 1061.

In reply to the constitutional objection to such a bill, Calhoun said that he was no advocate of refined arguments on the Constitution. The instrument was not intended as a thesis for the logician to exercise his ingenuity on. It ought to be construed with plain good sense. He denied that Congress was restricted to the enumerated powers. He thought "the general welfare" clause stood on the same footing as other clauses. Furthermore, the continued practice of the government was in harmony with his contention. He said :

We granted by unanimous vote, or nearly so, fifty thousand dollars to the distressed inhabitants of Caraccas, and a very large sum, at two different times, to the Saint Domingo refugees. If we are restricted in the use of our money to the enumerated powers, on what principle can the purchase of Louisiana be justified? To look no further back, at the last session a considerable sum was granted to complete the Cumberland Road.¹

At the conclusion of this speech, Pickering addressed the House, seeking to controvert the "latitudinarian doctrines" of Calhoun in regard to the "general welfare." If such a construction were admitted, he said, then the careful enumeration of powers was useless. If there was the power to construct roads and canals, it was an implied power growing out of the power "to regulate commerce with the foreign nations and among the several states and with the Indian tribes," and not out of the "general welfare" clause. Mr. Root, of New York, would confine the expenditure to canals, as there would be less interference with "state rights and sovereignty." Mr. Robertson, of Louisiana, opposed the bill because it called for "too much intermeddling on the part of the General Government."² He thought this country owed its greatness, not to legislation, but to circumstances independent of laws—to "our Constitution, soil, climate, increasing population, and exemption from the paternal care of government." Mr. Clay, the speaker, thanked Calhoun for his "luminous speech." He had no doubts as to the expediency and constitutionality of the bill. Mr. Clay cited the Cumberland Road, which would be completed to Wheeling in about three years, as a good example of the benefits to be derived from national improvements. The time from Baltimore to Wheeling was by its construction being reduced from eight to three days. Mr. Smith of Maryland admitted the advantage of improvements national in character, and cited the Cumberland Road; but denied that it was constructed from the United States Treasury, but from the "2 per cent. fund" which originated in the compact between the United States and

¹ *Annals*, 14th Cong., 2d Sess., pp. 851-58.

² *Ibid.*, pp. 851-58.

Ohio. The improvements provided for by the "bonus bill" in all probability would be local and not national, because each state must receive its apportionment.¹ Mr. Wilson, of Pennsylvania, thought "the *spirit* of the Constitution" justified passing the bill.² Mr. Ross, of Pennsylvania, pointed out the awful results that would follow the making of roads, even admitting their constitutionality under the war powers of Congress.

What next? War! War! is the cry which will next resound within these walls. . . . Then, then, we shall enjoy the sublime spectacle of seeing our citizens chained to the chariots of the victor, with his garments rolled in blood.³

The bill passed the House by a vote of 86 to 84.

In the Senate, Daggett, of Connecticut, opposed the bill on constitutional grounds. He did not think it could be justified under "general welfare," "power to regulate commerce among the states," or power "to establish post-offices and post-roads." He thought the practice in regard to the Cumberland Road dangerous, and not to be taken as a criterion. Nor did he think this could be done "with the assent of the states." He asked: "Can a law be made with the consent of the states, which is not warranted by the Constitution?" He remarked that different presidents had recommended internal improvements, but always with the suggestion that a constitutional amendment was necessary.⁴ Mr. Macon, of North Carolina, thought the bill too general in character. He thought it looked more like constitution-making than legislating.⁵

The bill passed by a vote of 20 to 15.⁶ It reached the President at the very close of his second administration. He might have applied the "pocket veto," but followed the more courageous course and returned it with his objections to the House March 3, 1817.

He vetoed the bill on the ground that it was unconstitutional. He did not think it was included among the enumerated powers; nor did it fall by any just interpretation within the power "to make laws necessary and proper for carrying into execution the enumerated powers;" and it would have a tendency to subjugate the Constitution and laws of the states to the laws of the United States. He denied the power of the United States to appropriate money for or to construct such improvements; nor could either of these be done even with the consent of the states. The only way a state could give its consent was

¹ *Annals*, 14 Cong., 2d Sess., p. 885.

² *Ibid.*, p. 900.

³ *Ibid.*, p. 914.

⁴ *Ibid.*, p. 172.

⁵ *Ibid.*, p. 177.

⁶ *Ibid.*, p. 191.

by means of an amendment to the Constitution granting power over internal improvements. He therefore, strongly urged such an amendment, as he was favorable to a national system of internal improvements.¹ It is thus seen that Madison did not distinguish between the power (1) to appropriate without constructing; (2) to appropriate and construct; (3) to appropriate, construct, and administer or exercise jurisdiction. Important distinctions were soon made in these respects.

Of course, in the hurry of the last day of an expiring Congress the measure could not be debated again. A vote was immediately taken on whether the bill should pass in spite of the President's objections. The vote was 60 to 56.² A majority of the house remained unconvinced by the president's veto message; but the constitutional majority of two-thirds was not secured, and the first real internal-improvement bill, based on broad construction of the constitution, was dead.

An analysis of the vote shows New England almost solidly arrayed against such improvements. The middle, extreme southern, and western states favored it. Virginia and North Carolina opposed it. The vote in the Senate on the original bill showed about the same alignment.³

There is considerable significance in these two attempts at a comprehensive internal-improvement policy. Gallatin's famous report showed a tendency to break away from the "Cumberland Road compact," as the federal treasury promised a surplus; but to return to the shelter of the "compact" when hard times came on as a result of the embargo and the War of 1812. The war revealed the necessity for roads, and led to the national feeling which resulted in chartering the United States Bank and passing a protective tariff. Madison had been coerced into a declaration of war, had signed two bills strongly national in character, but vetoed the "bonus bill" on the ground of its unconstitutionality. He had no more political ambitions to satisfy; hence he was true to his original Republican doctrines.

The Cumberland Road furnished arguments for both factions in Congress. One side said that as the improvement was a success commercially and politically; we should depart from the "compact" theory and establish a comprehensive system of internal-improvements. The other side, including the President, said that the Cumberland Road was a good improvement, but a departure from the "compact" theory for a general internal-improvement policy was not justified unless an amendment granting the power should be adopted.

¹ *Messages and Papers of the Presidents*, Vol. I, p. 584.

² *Annals*, 14th Cong., 2d Sess., p. 1061.

³ *Ibid.*, p. 191.

VI. JURISDICTION; "THE CUMBERLAND ROAD GATE-BILL OF 1822."

1. *Jurisdiction.*—Madison's veto of the "bonus bill" placed a temporary check on the rising spirit of nationality. It called a halt and a return to the method of appropriations for the Cumberland Road reimbursable from the "2 per cent. fund;" but in the excitement of the discussion on the "bonus bill" even the annual appropriation for this improvement was forgotten. However, in 1818 the sum of \$312,984.60 was appropriated. The fund pledged for its payment included land sales, not only in Ohio, but also in Indiana and Illinois.

It was this territorial expansion and the rising tide of popular feeling in favor of internal improvements that led Congress to fly again in the face of executive opposition. The issue was joined in the "Cumberland Road Gate-Bill of 1822;" but there was considerable fencing before Congress and the President closed for the constitutional combat.

It must be remembered that the power to construct internal improvements was not a specific delegation in the Constitution. The Constitutional Convention provided for a state internal-improvement fund by means of tonnage duties levied with the consent of Congress;¹ but the western states, moved by commercial motives, and the United States, moved by political motives, entered into "compacts" for the construction of the Cumberland Road. This road was to be constructed through the states only with their consent. Congress made no provision for exercising the right of eminent domain. The states granted the right of way, and allowed the United States to expropriate private property under state laws and through state officers.² The state consent once given, the president exercised a free hand in location and construction. This left in abeyance the whole question of the preservation and repair of the road. Granting that the United States could, under "compact," appropriate for and provide the administrative machinery for constructing such an improvement, where was lodged the authority to protect it when once constructed? Could the United States erect toll-gates and enforce the collection of tolls, provide officers to police the road, and punish criminal acts of destruction? In a word, could the United States exercise *jurisdiction* over the road after it had appropriated for and constructed it?

¹ See pp. 37.

² See p. 40.

Although the first appropriation for the road was made in 1806, the contract for the first ten miles was not let until May 8, 1811. The location followed in general the old Braddock Road. So great was the demand for the road that before the first letting was really finished repairs were needed. It was in this way that the question of tolls, and therefore federal jurisdiction, arose. In 1812 Gallatin, transmitting the report of the superintendent of the road, stated that the superintendent recommended that the United States levy tolls for repairs. But Gallatin observed that this could only be done under authority of the State of Maryland.¹ A House committee, April 14, 1812, reported in favor of levying a toll sufficient to keep the road in repair.² In 1813 David Shriver, the superintendent, reported that Maryland expected to pass a law authorizing the President to receive tolls for the purpose of repairing the road; also to prevent abuses against the road.³ Again, in 1815, Secretary Dallas, in transmitting his report, stated that provisions for keeping the road in repair, and for preventing abuses to the work by reckless persons, were necessary, but that Congress had no constitutional authority to make such provision. He thought such measures could proceed only from the legislatures of the states through which the road passed. He said that the part completed at that time was wholly within the state of Maryland. The state had not yet yielded to the requests made for such legislation, but it was thought she would do so ultimately.⁴

With reference to preventing the destruction of the road, a House committee, on March 23, 1816, reported:

It appears that the Secretary of the Treasury, in his letter communicated at the last session, doubts the authority of Congress to pass any laws for punishing the offenders. The committee do not perceive any defect of jurisdiction. Without controverting the opinion that the commission does not, in virtue of any grant of power conferred by that instrument, authorize Congress to open roads and canals in any state, it seems to be admitted by all that if a *compact* be made, for which the nation receives an equivalent as in this case, whereby it is agreed that a road shall be opened by the Government of the Union, and the states through which the road passes grant the right to make it, the performance of such compact is not in contravention of that construction, as it is believed that the exercise of such power has, in no instance, been doubted, notwithstanding the repeated acts of legislation for a period of thirteen years. The permission of such states having been given, it follows, as a necessary consequence, that all the powers obviously necessary

¹ *Miscellaneous State Papers*, Vol. II, p. 175.

³ *Ibid.*, p. 205, 12 Cong., 2d Sess.

² *Ibid.*, p. 182.

⁴ *Ibid.*, p. 272, 13th Cong., 3d Sess.

and proper to carry the grant into complete effect, and preserve it inviolable, have been conferred also. A different construction would render the consent a nullity, and exempt from punishment as well the individuals who resisted the execution of the work, as those that afterwards destroyed it.

If the right to punish these offences belongs to the National Government, it may be effected without the passage of any law, by indictment or information in the courts of the United States, or by enacting statutory provisions fixing the penalties, it being a fundamental right of the judiciary inherent in every Government to punish all offences against the laws passed in the pursuance of a delegated power independently of express legislative sanctions. Although the committee deem it proper to make this explicit assertion of a right which it may become necessary to exercise on some future occasion, in case of a peremptory refusal by a state to pass any law upon the subject, yet, as they believe that no such disposition exists in relation to the road in question, and that prosecutions under state laws may be most effective in preventing the practices complained of, because of the distances to places where the respective Federal courts are held, they abstain from recommending at this time the passage of any law upon the subject.¹

2. *Forces Leading to the Passage of the "Cumberland Road Gate-Bill of 1822."*—The report of the committee indicated what would be the temper of Congress on the question of jurisdiction, if the necessity for its exercise should arise. A declaration seemed sufficient at that time; but in 1822 this feeling found expression in a bill for federal jurisdiction. This action was not taken suddenly, as a number of internal-improvement forces had tended toward this end for some time prior to 1822. Some of these tendencies are now to be indicated.

Although Monroe, the new President, belonged to the Virginia school of close-constructionists, the friends of internal-improvements thought he would be friendly to the movement and not veto a measure on constitutional grounds. His attitude toward the subject was awaited with enthusiastic hopefulness.

The "bonus bill" was the most important question before the second session of the Fourteenth Congress; but Madison had blocked the action of Congress; and as the American people were intensely interested in the subject, Monroe thought an expression from him, the incoming President, should be made; hence in his first inaugural, March 4, 1817, he said:

Other interests of high importance will claim attention, among which the improvement of our country by roads and canals, proceeding always with a constitutional sanction, holds a distinguished place.²

¹ *Miscellaneous State Papers*, Vol. II, p. 301.

² *Messages and Papers of the Presidents*, Vol. II, p. 8.

This expression was but an earnest of the treatment of the subject in his first annual message to Congress, December 2, 1817. Referring to the subject of internal improvements, he said :

As this subject was acted on by Congress at the last session, and there may be a disposition to revive it at the present, I have brought it into view for the purpose of communicating my sentiments on a very important circumstance connected with it with that freedom and candor which a regard for the public interest and a proper respect for Congress require. A difference of opinion has existed from the first formation of the Constitution . . . respecting the right of Congress to establish such an improvement. Taking into view the trust with which I am now honored, it would be improper after what has passed that this discussion should be revived with any uncertainty of my opinion respecting the right. Disregarding early impressions, I have bestowed on the subject all the deliberation which its great importance and a just sense of my duty required, and the result is a settled conviction in my mind that Congress do not possess the right. It is not contained in any of the specified powers granted to Congress, nor can I consider it incidental to or a necessary means, viewed on the most liberal scale, for carrying into effect any of the powers, which are specifically granted. In communicating this result I cannot resist the obligation which I feel to suggest to Congress the propriety of recommending to the states the adoption of an amendment to the Constitution which shall give to Congress the right in question.¹

This frank declaration clearly placed the President in opposition to the policy of internal improvements, except with the aid of a constitutional amendment.

This part of the message was referred to a special committee in the House, of which Mr. Tucker was chairman. The report was ready December 15, 1817. This report is to be considered a reply to the message. The committee asserted that a former executive veto and the known hostility of the present President should not deter Congress from considering the matter :

For, if the constitutional majority of the two Houses should differ with the Executive Department, the opinion of the latter, however respectable, must yield to such an expression of their will.²

The laws of earlier Congresses were passed in review and precedents found in favor of exercising such power. The practice of the federal government in regard to the Cumberland Road was specially cited. The committee showed that Congress had the power (1) to lay out, construct and improve post-roads ; (2) to open, construct, and improve

¹ *Messages and Papers of the Presidents*, Vol. II, p. 18.

² *Miscellaneous State Papers*, Vol. II, p. 443. Mr. Calhoun had been given a place in Monroe's cabinet as secretary of war, and Clay was speaker.

military roads; (3) to cut canals through the several states with the assent of the respective states. The jurisdictional power over the soil in all cases was to be left with the states. Here was a joining of the power of Congress over postal matters, military affairs, and internal commerce. But the committee denied that it was resorting to a liberal construction of the Constitution, although such would be justified.

Would the House sustain the committee by the constitutional two-thirds majority in flying in the teeth of executive opposition already made known in the annual message? The committee's resolution and report¹ went to the Committee of the Whole, but was not taken up for debate until March, 1818. Various members wanted the committee to rise out of courtesy to the known constitutional objections of the President. Clay urged the House to a full consideration of the subject. Tucker, as chairman of the special committee, thought the national, not local, character of the improvement gave it both its importance and its constitutionality.² He said that the Cumberland Road, which was intended to bind the East and the West together, should not be abandoned simply because the central country through which it passed derived small advantage from its construction, or that improvements of a large interstate character should not be undertaken simply because states were forbidden by the Constitution to contract with each other. Concerted action must have national support. On the proposition to amend the Constitution, Mr. Tucker thought it unnecessary to submit such a proposition, as three-fourths of the states must ratify for an amendment. This gave six small states the power to obstruct what was clearly the will of a majority of Congress. Mr. Clagett, of New Hampshire, was opposed to the resolution. He thought the committee was contending for a "latitudinous" construction. He could not see a justification for exercising a power that the committee feared would be denied if asked for in the constitutional way by amendment.³ Mr. Hopkins thought the United States had power to make improvements without the consent of the states.⁴ Mr. Smyth, of Virginia, would not undertake to defend the constitutionality of the method of appropriating for and also constructing the Cumberland Road. He added:

The power which it is now proposed to exercise is the power to legislate respecting *internal police* and *local interests*, with the assent of the states, and to appropriate the money of the particular states for the advancement of local interests.⁵

¹ *Miscellaneous State Papers*, Vol. II, p. 447.

³ *Ibid.*, p. 1133.

² *Annals of Congress*, 15th Cong., 1st Sess., p. 1117.

⁴ *Ibid.*, pp. 1136, 1137.

⁵ *Ibid.*, p. 1140.

Even if a state legislature assented to the exercise of such a power, its successor might repeal this consent;¹ nor should power be extended for "beneficial effects." This, he said, was the excuse offered by Cæsar, Cromwell, and Napoleon. In the making of the Cumberland Road Congress was sensible of a deficiency of power, as it had passed no laws for the protection of the Road.²

Mr. Clay, of Kentucky, favored the report of the committee. In his opinion, Congress had power to construct roads, even without the consent of the states. He contended that when a road is constructed by the United States, they have a jurisdiction over it concurrent with the states in the matter of protecting it.³ He wished gentlemen to elevate their views to the height this nation would surely reach; the country was large and extending; bind these interests together; the Constitution was not made for the Atlantic margin of states merely, but for all; state consent for internal improvements was not absolutely necessary, but perhaps desirable.⁴ Mr. Cushman, of New York, thought the power might be exercised with the consent of the states, citing congressional control that had come about through state consent.⁵ He said the power to make roads and canals was nowhere granted in the Constitution, but was incidental to other powers. He cited the constitution of Ohio in case of the Cumberland Road,⁶ and denied that this was simply a commutation of the state's right to tax United States lands in return for a road. In reply to the suggestion to amend the Constitution, he said that it took a two-thirds vote of Congress and three-fourths of the states; but this majority of three-fourths of the states was only theoretical, as a majority in six states, all containing a population of less than 700,000—a population unequal to that of any one of three single states and not a twelfth of the whole—could prevent an amendment.⁷ Mr. Austin, of Virginia, was opposed to the doctrine of implied power. He said that "you imply one power, and then you have to imply another to carry that power into execution. Thus the implied powers become an original, and you have to imply a dozen others as incidental."⁸ Mr. Simpkins, of South Carolina, was in favor of the committee's report. In his opinion, local jealousies militated against the interests of the Union. The West was growing rapidly. He had heard it said that the great ridge of mountains dividing the West from the Atlantic states would be the line of separation between the sections. He thought the "general welfare clause" of the Consti-

¹ *Annals of Congress*, 15th Cong., 1st Sess., p. 1143.

⁵ *Ibid.*, p. 1190.

⁷ *Ibid.*, p. 1200.

² *Ibid.*, p. 1149.

³ *Ibid.*, p. 1169.

⁴ *Ibid.*, p. 1119.

⁶ *Ibid.*, p. 1194.

⁸ *Ibid.*, p. 1215.

tution sufficient, but this was strengthened by specified powers, to which this was clearly incidental, being necessary to the execution of these powers. Mr. Simpkins was opposed to a narrow, technical, lawyer-like construction of the Constitution.¹ Mr. Johnson, of Virginia, passed in review such matters as chartering a United States Bank; the sending of Chief Justices Jay and Ellsworth on diplomatic missions; the passing of the alien and sedition acts; the construction of the Cumberland Road; of the road from Nashville to Natchez, and especially the military road from Plattsburg to Sackett's Harbor; the employment of a chaplain by Congress; the purchase of historical paintings for the capitol; and pronounced them unconstitutional because they were not included in the enumerated powers. He thought precedent not a safe guide. Repeating an error did not make it legitimate. Mr. Lowndes, of South Carolina, said that some members admitted that roads might be built as a war measure, but complained that these same members would not allow these roads to be constructed in time of peace.

Was it not evident that this right to make a road which was deduced from the laws of nations and of war would be too often unavailing? When forced to retreat, we may begin to make a road, under the cannon of the enemy; we may constitutionally use the pick axe and spade when every hand is required for the bayonet. And here we have no bad illustration of the character of these constitutional doctrines. Roads and canals are always useful, sometimes necessary; there are cases where the General Government may construct them; but when? They are practicable in peace, but then they are unconstitutional; they are constitutional only when they are absolutely impracticable.²

Mr. Sawyer, of North Carolina, said he understood some gentlemen to say that this power should be exercised without the *consent of the states*.

If such a violent course as that be attempted, I apprehend that it will be met with more substantial arguments than any used here; and those who may come with their axes, spades and shovels to tear the virgin bosom of our country in defiance of us, may find themselves forced to intrench themselves behind the first bank they throw up—for the first hole they dig may prove the grave of some or other of us. Should my state unfurl her banners, I for one would plant myself under them, and resist till the flesh were hacked from my bones, before I would submit to such despotism. It is true as the gentleman from Kentucky states it might be prudent to obtain the consent of the states; indeed I think it would.³

¹ *Annals of Congress*, 15th Cong., 1st Sess., p. 1200.

³ *Ibid.*, p. 1246.

² *Ibid.*, pp. 1228-30.

⁴ *Ibid.*, p. 1270.

Mr. Mercer, of Virginia, in the course of a long speech, in replying to a proposition that the states would undertake such improvements as were necessary, said states were moved "by local and petty considerations." He cited many examples in the various states, and pointed out that in the construction of the only public work of considerable magnitude by the United States, one state had long delayed operations by withholding its consent; and two little towns in Pennsylvania had by the exercise of pernicious influence bent the road from its direct course to suit their own narrow interests;¹ even then Maryland was refusing to authorize a toll for the repair of the road because of petty jealousy.² He thought the doctrine of states' rights pernicious; it had almost paralyzed the military power in the late war;

there remains not now, however, a solitary state which has not, in some form or other, exercised this power, nor one, I might add, which has not had cause to repent it.³

He said that Congress had power

to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. The second part clearly gave Congress power to appropriate such part of the surplus as could not then be applied to the public debt.⁴

In reply to the statement that the Cumberland Road was constructed from public-land funds as a result of a compact, he said the act ceding this territory stated that it "should be considered as a common fund for the benefit of the Confederation." The compact with Ohio then was not in harmony with the Act of Cession, but with the general principles that we may expend our funds, whether derived from the public lands or other sources, for general purposes.⁵ Mr. Clay again took the floor and said that internal improvements could be constructed under the implied powers; that "a grant of the end is a grant of the means."⁶ He thought the President, in serving notice on Congress that he was opposed to internal improvements as the Constitution then stood, had reversed the legislative order. He should have waited until a bill was presented to him, and not have undertaken to intimidate Congress.

At the conclusion of Mr. Clay's speech, the resolution of the select committee was changed, and then agreed to by the Committee of the Whole, as follows: (1) Congress had power under the Constitution to appropriate money for the construction of post-roads, military, and

¹ See p. 22.

² *Annals*, 15th Cong., 1st Sess., p. 1304.

³ *Ibid.*, p. 1309.

⁴ *Ibid.*, p. 1315.

⁵ *Ibid.*, p. 1334.

⁶ *Ibid.*, p. 1362.

other roads; for canals; and for the improvement of water courses. (2) The other three resolutions were to the effect that Congress had *power to construct* (1) post-roads and military roads; (2) roads and canals necessary for commerce between the states; (3) canals for military purposes.¹ There was a provision in the last three resolutions in regard to construction that private property should not be taken for public purposes without just compensation.² Here it is noticed that the consent of the states was not required; the power to exercise the right of eminent domain was asserted in the boldest terms. This assertion reached the high-water mark on national jurisdiction over the Cumberland Road. But the Committee of the Whole did not carry the House with it, except on the first resolution; the other three were lost by narrow margins.³ The long debate was at an end; a reply had been made to the President's message, and this reply asserted that Congress had the power to appropriate for internal improvements. No bill for a general system of internal improvements was presented; but on the same day the vote was taken a bill to make further appropriations for the construction of the Cumberland Road was passed.⁴

The action in the Senate took a different trend.⁵ The President's message was read December 2, and seven days later Senator Barbour, of Virginia, introduced the following resolution for an amendment to the Constitution :

Resolved, That Congress shall have power to pass laws appropriating money for constructing roads and canals, and improving the navigation of water courses;

Provided, however, That no road or canal shall be constructed in any state, nor the navigation of its waters improved, without the consent of such state; and

Provided also, That whenever Congress shall appropriate money to these objects the amount thereof shall be distributed among the several states in the ratio of representation which each state shall have in the most numerous branch of the National Legislature. But the portion of any state may be applied to the purpose aforesaid in any other state.⁶

Mr. Barbour said all the senators would remember the fate of the "bonus bill;" now that the President had pronounced against the constitutionality of internal improvements, a resort to the people for an amendment was the best solution. The resolution passed to a second reading.⁷ February 18, 1818, the resolution was reported

¹ *Annals*, 15th Cong., 1st Sess., p. 1380.

² *Ibid.*

³ The vote was 90 to 75.

⁴ *Annals*, 15th Cong., 1st Sess., pp. 1385-89.

⁵ *Ibid.*, p. 1389.

⁶ *Ibid.*, p. 21.

⁷ *Ibid.*, p. 24.

without amendment, but it was indefinitely postponed without debate by a vote of 22 to 9.¹

The above vote of 22 to 9 on the amendment in the Senate, and the votes in the House of 90 to 75 on the resolution to appropriate money for internal-improvements, and of 74 to 56 on the Cumberland Road² revealed too even a division to warrant presenting any general internal-improvement bill for the President's veto. A House committee had made a strong report; the broad-constructionists in the House had presented able arguments in favor of the system; and, although defeated on the proposition to construct without state consent, they had carried a proposition affirming congressional power to appropriate for such purposes. The next move was to fortify the position already taken.

Calhoun, the strong supporter of the "bonus bill," was secretary of war for Monroe. The House, on April 4, 1818, by a vote of 76 to 57, resolved that the secretary of war prepare and report to the House at the next session "a plan for the application of such means as are within the power of Congress for making roads and canals with a view to military operations." The secretary of the treasury was asked for a statement of what had been done in the direction of internal-improvements,³ and here the matter rested.

Calhoun's report was laid before the House January 14, 1819. He sketched a comprehensive scheme for internal-improvements, taking Gallatin's famous report as a basis. He said:

A judicious system of roads and canals constructed for the convenience of commerce and the transportation of the mail only, without any reference to military operations, is itself among the most efficient means for the more complete defence of the United States.⁴

Perhaps out of deference to his chief he did not discuss the constitutional phases of the subject. It was in this report that he urged the use of federal troops in constructing works of public utility.⁵

Congress was prevented from entering on an internal-improvement plan immediately because of the hard times of 1819-20. It returned to the one great work already under way—the Cumberland Road.

In 1818 the road was finished to Wheeling; the same year Illinois was admitted to the Union with a compact similar to that of Ohio; two years later Missouri came into the Union on like terms. In 1820 an appropriation of \$10,000 was made to survey the road westward through

¹ *Annals*, 15th Congress, 1st Sess., pp. 211 and 292.

⁴ *Miscellaneous State Papers*, Vol. 11, p. 534.

² *Ibid.*, p. 1664.

⁵ *Ibid.*, p. 536.

³ *Ibid.*, pp. 1678, 1679.

Ohio, Indiana, and Illinois to the Mississippi River. It is thus seen that it took from 1806 until 1818 for the road to reach the first state whose lands were pledged for its construction. But the road in its extreme eastern part was falling into decay. Maryland did not pass laws for its protection, and would not authorize Congress to erect toll-gates to collect funds to preserve this improvement. This subject had already received much attention in reports of superintendents and treasurers.¹ It was doubted whether Congress had the constitutional authority to preserve it by erecting toll-gates and policing the road; but a great judicial decision strengthened the faith of Congress.

In 1819 Marshall rendered his famous decision in the case of *McCullough vs. Maryland*. In this he stated the doctrine of the implied powers already hinted at in the committee's report in 1817,² and the arguments of the broad-constructionists when debating the "bonus bill," the report of the special committee on Monroe's message, in 1816 and 1817 respectively.³ In this decision he said:

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the spirit of the Constitution, are constitutional.⁴

On March 20, 1820, the Committee on Roads and Canals introduced a bill in the House to authorize the President to cause toll gates to be erected on the Cumberland Road and tolls collected to keep the road in repair. There was almost no debate on the bill. It was advanced to second reading by a vote of 111 to 47, but did not appear again at this session.⁵ Various other attempts were made, both in the Senate and the House, to undertake a system of repair for the Cumberland Road.⁶ Finally in May, 1822, "An Act for the Preservation and Repair of the Cumberland Road" passed the House by a vote of 87 to 68.⁷ In the Senate only seven votes were cast against it.⁸

Strangely enough, there was almost no debate on this important measure. The reports of the committee in 1816, the debates on the "bonus bill," and debates on Monroe's message must furnish the constitutional support for the passage of so important a measure. The spirit of the times in 1822 also favored the preservation of this important internal-improvement. The defeat of the "bonus bill" by Madison's veto in 1817 was the signal for New York to embark on the construc-

¹ See p. 56.

² See p. 58.

³ See p. 58.

⁴ CURTIS, IV., 430.

⁵ *Annals*, 16th Cong., 1st Sess., pp. 1657-59.

⁶ *Ibid.*, 17th Cong., 1st Sess., pp. 26, 560, 576, 645, 789, 790.

⁷ *Ibid.*, p. 1734.

⁸ BENTON, *Thirty Years in the United States Senate*, Vol. 1, p. 22.

tion of the Erie Canal, which promised great things for the future. The Cumberland Road was finished to the Ohio in 1818. The Chesapeake and Ohio Canal also held a large place in the public mind. As a result of this interest, the candidates for the presidential election of 1824 were already in the field; and three of them—Adams, Clay, and Calhoun—were avowed friends of internal-improvements; the other two—Jackson and Crawford—were qualifiedly friendly.¹ All these forces, working together, swept Congress on to the assertion that it had jurisdiction over internal-improvements within the states. It was thought that the good feeling of this era would deter Monroe from vetoing this measure, as he was nearing the close of his second term.

The provisions of the bill were that the President was authorized to cause to be erected toll-houses, gates, and turnpikes on the Cumberland Road; to appoint toll-gatherers who should have power to enforce the collection of tolls which were designated by Congress; but no toll was to be paid by the United States for the transportation of military stores, or by any person in the military service of the United States, or in the militia of any of the states; the net returns from tolls should be used for the preservation of the road; the President might increase or diminish tolls to what was necessary to keep the road in repair; persons were directed to keep to the left on passing, or pay a fine; any person attempting to avoid payment of toll was subject to a fine.²

In this section many of the great arguments for an internal-improvement system have been set forth. In the "bonus bill," already treated, we saw how Congress, departing slightly from the principle of "compact," affirmed its constitutional right to appropriate for and inaugurate a system of internal-improvements. This movement was checked by Madison's veto. Monroe was friendly to the system, but wanted a constitutional amendment. The congressional reply was the long debate in the House, and the final assertion that Congress had the right to appropriate for internal-improvements. In the Senate an effort was made for an amendment to the Constitution. The need for repairs on the road, the advocacy of the doctrine of implied powers, and the commercial and political fervor which had been aroused by the spirit of the times led Congress in 1822 to pass the "gate bill." President Monroe's disposition of the bill is next in order.

3. *Monroe's veto of the "gate bill."*—Monroe sent in his veto message May 4, 1822.³ His objections were that Congress was not constitu-

¹ BENTON, *Thirty Years in the United States Senate*, Vol. I, p. 22.

² *Annals*, 17th Cong., pp. 1872-74.

³ *Messages and Papers of the Presidents*, Vol. II, p. 142.

tionally competent to exercise jurisdiction over internal-improvements. In a paper of the same date he presented his views on the general subject of internal-improvements. This is one of the longest, as well as one of the ablest, veto messages ever written; therefore it will be noticed somewhat in detail.

a) *Division of governmental powers.*—When the power of the crown was abrogated, the powers of government passed to the people in each colony, who organized as states and then confederated for certain purposes; but each state retained its sovereignty, freedom, and independence. The confederation failing, the present Constitution was formed and ratified by the people in the several states; but they did not merge themselves in one community under one government. Two governments were established—one for local purposes, the other for national; both had a common origin—the people. To the federal government specific powers were delegated; while all other powers were retained by the states or the people.

b) *Federal powers necessary for the adoption and execution of a system of internal-improvements.*—For Congress to inaugurate and carry out a system of internal-improvements the following powers Monroe declared necessary: (1) to appoint a board of skilled engineers to lay out the plans and exercise the right of eminent domain, if owners refused to sell property in the right of way; (2) to keep the improvement in repair by some such plan as had just been passed by Congress for the Cumberland Road; (3) to pass laws for the improvement, and to punish offenders wherever found; (4) to establish turnpikes with gates, and appoint persons to collect tolls and inflict penalties in case of refusal to pay; (5) to coerce a state if it objected to the exercise of these powers within its borders.

c) *Examination of arguments made by supporters of internal-improvements.*—Monroe stated that if the United States possessed these powers, they were either specifically granted, or were incidental and necessary for carrying into execution some specific grant or grants. He said that the advocates of an internal-improvement policy derived this authority from congressional power: (1) to establish post-offices and post-roads; (2) to declare war; (3) to regulate commerce among the states; (4) to pay the debts and provide for the common defense and general welfare of the United States; (5) to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States or in any department or officer thereof; (6) to dispose of, and make all needful rules

and regulations respecting, the territory and other property of the United States.

He examined these clauses in order :

(1) The right to establish post-offices and post-roads could not, in the ordinary meaning of "establish,"¹ mean more than the right of using existing roads, and not the right to construct them or exercise any jurisdiction whatsoever.

(2) Using the same rules of interpretation, he declared that power over internal-improvements could not be incidental to the war power. He showed how carefully the Constitution specified, in connection with war, such matters as raising money, equipping the army and navy, calling out the militia, and exercising jurisdiction over forts, arsenals, dock yards, and magazines after cession by the states of such places and jurisdiction; and concluded that, since these matters, which might have been considered incidental to the war power, were mentioned in detail, and roads and canals were omitted, therefore they could not be included as incidental to the war power.

(3) The right to regulate commerce the President traced historically, and concluded that it gave only the power to impose duties on imports and to prevent interstate restrictions on commerce.

(4) The general-welfare clauses according to Monroe gave the power "to tax" in order "to pay the debts and provide for the . . . general welfare of the United States." Here, he thought, were two great powers. He argued that the first power, viz., "to tax," was unlimited except by uniformity; and that the general-welfare clause gave the power to appropriate; for (a) if this clause did not give the right to appropriate, then the power could not be found; (b) this part of the grant was incidental to the power "to tax;" (c) the place it occupied in the Constitution was most fitting for this purpose.

He examined the various acts of Congress appropriating money for roads, and found them to be justified by this clause; but he argued that appropriations could be made only for large national purposes. He said :

My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by their duty to appropriate it to purposes of common defence and of general, not local, national, not state benefit.

In his opinion, the power to appropriate did not carry with it the power to construct, or to exercise the right of eminent domain or any other jurisdiction whatever.

¹ For Clay's reasoning on "establish" see *Annals*, 15th Cong., 1st Sess., p. 1176.

(5) The power to make all laws necessary, etc., he had always considered as having been granted on the principle of greater caution to secure the complete execution of all powers which had been vested in the general government. It contained no specific power, hence it could not include the power to construct internal-improvements, for this power was not granted.

(6) As to the power to make all needful rules and regulations concerning the territory and other property of the United States, he showed that this had reference to the territory and property belonging to the United States as cessions from the states at the formation of the Constitution, and had no bearing on the question of internal-improvements. He concluded from the foregoing examination that the right could not be derived from one or all of the powers claimed by the advocates of a complete system of internal-improvements for the United States, as it would include the power of eminent domain, the right to impose tolls and inflict penalties. In a word, Congress had the power to *appropriate* money, but not the power to *exercise jurisdiction*.

d) He next took up the *benefits of a general system of internal-improvements*, and strongly recommended the system, if it could be done by means of a constitutional amendment.² He pointed out that the Cumberland Road was falling into decay; it needed policing; but the power was lacking in the United States. Would the states receive so much of the road as lay within their borders and keep it in repair? He hardly thought so, as the advantages of the road were almost exclusively national. The most expensive parts of the road lay within Pennsylvania and Virginia, very near the confines of the states, and not essentially connected with the commerce of either. An amendment was the only means of transferring the power of jurisdiction, as it could not be done through the implied powers, nor could the states transfer it by mere consent.

In this veto message Monroe took a position different from that of Madison in 1817 and his own position in 1817-18.³ Madison was opposed to internal-improvements without a constitutional amendment, although he signed Cumberland Road bills because of the Ohio compact. In 1817-18 Monroe was opposed to internal-improvements without an amendment; in 1822 he was opposed to the exercising of administrative powers by the United States in either construction or jurisdiction, but he did favor the *appropriation* by the United States for such improvements under the head of the "general welfare." Here he

² *Messages and Papers of the Presidents*, Vol. II, pp. 144-83.

³ See p. 54.

seemed in a measure to obviate the difficulty raised by Madison. This brought the President into harmony with the vote of Congress in 1818, and with the people generally, on the power to tax and appropriate for internal-improvements. This was Monroe's only veto.

What would Congress do with the veto? Could it muster the necessary two-thirds vote in both houses to overcome it? On the original passage of the bill the vote in the House was 87 to 68¹; on the proposition to pass it over the veto, it was 68 to 72.² The bill was dead.

4. *Effects of Monroe's veto.*—In his veto message the President indicated a basis on which he and Congress could work together; viz., the federal government had power to appropriate money for internal-improvements of a *National character*. If Congress could not overcome the veto in favor of jurisdiction over internal-improvements, it must content itself with the exercise of the less important power for the present; hence the next year (1823) two important measures were passed in conformity with the President's suggestion: (1) the first river and harbor bill;³ (2) a bill appropriating directly for the repair of the Cumberland Road.

The President, in his annual message, December, 3, 1822, discussing the Cumberland Road and his veto message, said:

Should Congress, however, deem it improper to recommend such an amendment, they have, according to my judgment, the right to keep the road in repair by providing for the superintendence of it and appropriating the money necessary for repairs. Surely if they had the right to appropriate money to make the Road, they have the right to appropriate it to preserve the Road from ruin.⁴

January 7, 1823, a bill making an appropriation for repairs reached third reading in the Senate. Mr. Macon, of North Carolina, opposed it on constitutional grounds. Talbot, of Kentucky, Smith, of Maryland, and Van Buren, of New York, favored it on the ground that the large appropriations already made would be worse than wasted if the road were not repaired. The bill appropriating \$25,000 passed by a vote of 26 to 9.⁵ In the House a sharp contest was waged. A resolution from the Maryland legislature praying for the preservation of the road was read;⁶ also a letter from the postmaster-general, which said

¹ For an analysis of the vote see BURGESS, *Middle Period*, pp. 118, 119.

² *Annals*, 17th Cong., 1st Sess., pp. 1874, 1875.

³ LALOR, *Cyclopedia of Political Science*, Vol. II, p. 569. This policy has been pursued continuously to the present time.

⁴ *Messages and Papers of the Presidents*, Vol. II, p. 191.

⁵ *Annals*, 17th Cong., 1st Sess., pp. 84, 92.

⁶ *Ibid.*, p. 461.

that he had inspected the road and found it in a ruinous state, which greatly retarded the transportation of the mails.¹

Mr. Buchanan, of Pennsylvania, submitted an amendment that after December 1, 1823, any right which the United States might have to so much of the road as lay in Maryland, Pennsylvania, and Virginia should be ceded to the states; provided that the state legislatures should within six months thereafter accept the same and keep it in good repair within their respective limits, and should publish annually an account of the tolls received and expended.² Mr. Ingham, of Pennsylvania, moved to amend the amendment that in case any of the said states should accept the road and neglect to comply with the conditions, the United States, on proof being made, might resume any right to the road which it then possessed.³ These amendments were lost by a vote of 65 to 66. Some wanted the "2 per cent. fund" pledged for the appropriation, to distinguish it from other internal-improvements; the Indiana and Illinois representatives protested against the legality of pledging the fund arising from the sales of lands in their states, for the repair of the road east of the Ohio River and also against the act of 1819 which pledged these funds for construction.⁴ The bill was passed by a vote of 89 to 66; and the appropriation was made from general funds.

These two acts, the river and harbor bill, and the act for the preservation of the road brought Congress and the President into harmonious relations on the question of appropriations; the other part of the presidential program was a constitutional amendment which had been recommended also by Jefferson and Madison.

February 11, 1823, Senator Smith introduced a resolution for the following amendment to the constitution:

That congress shall have power to adopt and execute a system of internal improvements confined to great National purposes.

Two weeks later the resolution was tabled.⁵ At the first session of the Eighteenth Congress, Senator Van Buren, of New York, introduced a resolution for the following amendment:

Congress shall have the power to make roads and canals; but all money appropriated for this purpose shall be apportioned among the several states according to the last enumeration of their respective numbers, and applied to the making and repairing of roads and canals within the several states as Congress may direct; but any state may consent to the appropriation by Con-

¹ *Annals*, 17th Cong., 2d Sess., p. 508.

² *Ibid.*, p. 1072.

³ *Ibid.*, pp. 1063, 1064.

⁴ *Ibid.*, p. 1075.

⁵ *Ibid.*, pp. 200, 290.

gress of its quota of such appropriation in the making or repairing of roads or canals, without its own limits; no such road or canal shall, however, be made within any state without the consent of the legislature thereof, and all such money shall be so expended under their direction.

This resolution he supported with a speech in which he declared his friendship for internal-improvements, but wished the power to be exercised in a constitutional way. The resolution was tabled without debate.¹

Monroe in his annual message, December 2, 1823, referring to the Cumberland Road, said that, inasmuch as annual appropriations for repairs would be necessary, and the proposition for an amendment had failed, some different plan must be sought; and closed by submitting to Congress:

whether it may not be expedient to authorize the Executive to enter into an arrangement with the several states through which the Road passes, to establish tolls, each within its limits, for the purpose of defraying the expense of future repairs and of providing also by suitable penalties for its protection against future injuries.²

This part of the message was referred to the Committee on Roads and Canals in the House. It was not until May 7, 1824, that the committee reported through its chairman, Mr. Hemphill, of Pennsylvania.

It was the opinion of the committee that Congress had complete power to establish tolls on the Cumberland Road, and to provide suitable penalties for its protection; also that the principle contained in the bill of 1822 assumed no state jurisdiction, but was simply the exercise of a law of the United States constitutionally enacted. The infringement of a United States law must, with few exceptions, be committed within the territory of a state, but he who committed the offence must be punished by the United States; and this was not an infringement of state jurisdiction. The United States, in the opinion of the committee, could not acquire exclusive jurisdiction except with the consent of the legislature of a state, and then only for the erection of forts, arsenals, etc.; the states could in no other instances give jurisdiction to the United States except by way of an amendment. Of the wisdom of authorizing the President to enter into an arrangement with the states through which the road passed, for the establishment of tolls, the committee entertained grave doubts. The mixing of authorities over the road would in all probability lead to unpleasant results: one state

¹ *Annals*, 18th Cong., 1st Sess., pp. 134, 135.

² *Messages and Papers of the Presidents*, Vol. II, p. 217.

might erect toll-gates and another refuse; even if all were to comply, the road would be unequally repaired; the western states, too, might complain of the state of repair, which would produce irritation among sister states. Would a state undertake the management of a road not made mainly for its own accommodation? If a state should enter into such an arrangement, annual reports must be made—one to the state legislature, and another to the federal government; then, if a state should not comply with the arrangement, the right of the road would revert to the United States. Some might comply and others fail; hence the road again would belong to different jurisdictions. It appeared to the committee that the road should belong exclusively to one jurisdiction, and that the expense of repair should be raised by a toll on those who used the road; that it was inexpedient to enter into any arrangement with any of the states on the subject of the Cumberland Road.¹

There could be no agreement, then, between the President and Congress on the question of tolls and jurisdiction; so an effort must be made at conciliation on some other basis. Congress must present bills to the President which would meet with his approval, as the veto could not be overcome. In the Cumberland Road veto the President had advocated appropriating money for internal-improvements of national importance. He had already approved a river and harbor bill, and a bill for the repair of the Cumberland Road, and these acts were not based on state compacts, nor was the expenditure reimbursable from the sale of public lands. The important question was: What internal-improvements were of national importance? Congress itself could not decide because of the persistence of local importunity; hence an act was passed and approved April 30, 1824, which empowered the President to cause surveys, plans, and estimates to be made of such roads and canals as he might deem of national importance from a military, postal, or commercial point of view. He might employ a board of skilled engineers from the corps of engineers, and two or more civil engineers.² This board of engineers became a fixture in the American improvement policy of the federal government.³ The other steps taken by Congress, in harmony with the President's views of national importance, were the extension and construction of the Cumber-

¹ *Reports of Committees*, Vol. II, No. 118; 18th Cong., 1st Sess.; also *Annals* 18th Cong., 1st Sess., pp. 2556-58.

² *Annals*, 18th Cong., 1st Sess., p. 3217.

³ The debate on this bill is most instructive; see *ibid.*, pp. 830, 1163, 1233, 1264, 1296, 1324, 1344, 1371, 1399, 1430, 1462.

land Road west of the Ohio River. This act received his signature on March 3, 1825, the last day of his official life.

Some important considerations on the extension of the Cumberland Road reveal the national feeling and throw light on subsequent questions touching internal improvements; hence a short statement is here introduced.

In 1820 a bill was passed appropriating \$10,000 for laying out the road from Wheeling to the Mississippi River. Some efforts were made to begin constructions, but so long as the struggle was centering around the constitutionality of tolls and federal jurisdiction over the road east of the Ohio, nothing was done in spite of the three additional "compacts" pledging the "2 per cent. fund." January 12, 1825, by a vote of 57 to 55, the House took up for discussion the question of extension. Beecher, of Ohio, said that the road should not be viewed as a western subject either at its inception or then; that the people of Ohio, moved largely by national impulses, had made great sacrifices for the road; that the road was asked, not as a gift to the West, but on principles of national policy, as it would bind the Atlantic seaboard and the Mississippi valley together; that a narrow spirit influenced Congress to appropriate the \$15,000,000 expended by the government east of the Alleghanies on forts, lighthouses, the navy, and the whole civil list with minor exceptions. Cook, of Illinois, and Jennings, of Indiana,¹ complained about pledging the "2 per cent. fund" from their states for a road that was not even located in their states and, judging by past progress, would not be constructed for another generation. They would have the road located, opened, and bridged from the Ohio to the Mississippi. In view of this complaint, Beecher generously offered to appropriate from the federal treasury and not pledge the "2 per cent. fund." Rankin, of Mississippi, said that the original compact with Ohio was to bind the East and the West together, and this, in his opinion, had been done; that there was no necessity for binding the three great western states together, as their relative situation was sufficient. Touching the question of "advances"² already made, he said that the "2 per cent. fund" amounted, in 1823, to \$249,000, while the cost of the road had been \$1,600,000. McLean, of Ohio, ignoring the great discrepancy, said that unless the citizens of the country were united in interest there was no "ligament strong enough to bind them together; but the road would unite their interests."³

¹ *Congressional Debates*, 18th Cong., 2d Sess., pp. 137, 184-85.

² *Ibid.*, pp. 190-98.

³ *Ibid.*, p. 20.

The debate became general. Buchanan said the "2 per cent. fund" could never reimburse what had already been expended; so flimsy an excuse should not be offered by intelligent men; if the road was to be extended, let it be done as a national improvement.¹ Mr. Wood, of New York, was opposed to the extension of the road, as the map showed that it would run parallel to the Ohio River and at no great distance from it; and the Ohio and Mississippi were better for transportation purposes than any road.*

Other great national leaders also participated in the debate. Mr. McDuffie, of South Carolina, said that the "2 per cent. fund" was more than exhausted; that Ohio and its part of the Union had already received more than their share of money for internal-improvements. He favored the payment of the public debt.³ In a second speech he urged delay, and stated that other sections of the country had been slighted that the Cumberland Road might be built. He charged that the War of 1812 had really been fought in the interests of the West; that there was discrimination against certain sections in the raising and expenditure of the public moneys; viz., a considerable part of the public revenue was raised from goods imported into Charleston, and not a tenth part raised was expended there, but went to such improvements as the Cumberland Road in the North.⁴ This, of course, drew Webster's fire. He said he was in favor of internal-improvements, and wished to bring to the subject the right kind of feeling—one truly national. He said that benefits could not be prorated; there could be no just balancing of one local interest against another, as the strictly numerical view was bad. He stated that Congress had acted time and again with the idea of completing the road, and that this should now be done as a great national undertaking. He then defined a national work as follows: "Works surely may be denominated National which are of extensive importance, although the benefit may not be strictly universal." He said the public domain was not to be considered a great source of public revenue. The true object was to have the lands settled.

Mr. McDuffie in reply said he was not in favor of offering a bonus for the depopulation of the East by making lands in the West cheap.

Look, sir, at the present aspect of the Southern states. In no part of Europe will you see the same indications of decay—deserted villages, houses falling into ruin, impoverished lands thrown out of cultivation. Sir, I believe that if the public lands had never been sold, the aggregate amount of

¹ *Congressional Debates*, 18th Cong., 2d Sess., p. 207.

² *Ibid.*, p. 208.

³ *Ibid.*, p. 212.

⁴ *Ibid.*, p. 247.

wealth would have been greater at this moment. Our population, if concentrated in the old states, and not ground down by tariffs, would have been more prosperous and more wealthy.

Cheap lands and internal-improvements meant the settling of the West and the depopulation of the East.¹

Mr. Stewart, of Pennsylvania, said the War of 1812 was fought for the commercial interests of the East and over questions of impressment of sailors, not over the protection of the western frontier. He was in favor of the improvement.²

The proposition to make the appropriation \$150,000 was carried by a vote of 93 to 82. But the Illinois and Indiana representatives carried their point by having \$10,000 of this set aside for location to the Mississippi. The act fixed the capitals of Ohio, Indiana, and Illinois as points on the road.³

The only point of interest in the consideration in the Senate was the effort to carry a motion that the funds of Illinois and Missouri should not be pledged until their state legislatures gave their consent. This failed, and the bill passed by a vote of 28 to 16.

This debate reveals the strength of the sentiment in favor of national internal-improvement, but the tendency in that direction was not strong enough to prevent a resort to the original idea of "compact" between the United States and the states immediately concerned. It reveals an attitude of hostility between the East and the West; also a disposition to prorate or the idea of setting one locality against another. It also shows the future alignment to be taken by Webster and McDuffie on the question of nationalism against state rights.

During the two administrations of Monroe a great constitutional battle had been waged. Using the doctrine of the implied powers, Congress asserted its authority (1) to enter upon an extensive system of internal-improvements; (2) to exercise jurisdiction over the Cumberland Road. Monroe's policy, as outlined in his veto message of May 4, 1822, denied both propositions. He suggested (1) an amendment to the Constitution which should grant power over internal-improvements; (2) the *appropriation* by Congress for internal-improvements of a national character under authority of the "general welfare" clause of the Constitution.

¹ *Congressional Debates*, 18th Cong., 2d Sess., pp. 253, 254.

² *Ibid.*, p. 255.

³ *Ibid.*, p. 671 (1824-25).

As a direct result of Monroe's policy, Congress (1) passed the first river and harbor bill; (2) appropriated directly for the repair of the Cumberland Road; (3) created the Board of Engineers to determine on internal-improvements of a national character; (4) and extended the Cumberland Road west of the Ohio River. Congress did not provide for an internal-improvement amendment, and was not ready to yield on the question of jurisdiction over the road without another struggle when Adams came to the presidency.

VII. SURRENDER OF THE CUMBERLAND ROAD.

1. *Jurisdiction again.*—The retirement of Monroe ushered in John Quincy Adams, a President elected largely on an internal-improvement platform. The people were not kept long in suspense in regard to the President's position. Like Monroe, he touched the subject in his first inaugural. He said that internal-improvements would be a blessing to unborn millions of our population, as the roads and aqueducts of Rome had outlived her conquests and despotism. Referring to the Cumberland Road, he said: "To how many thousands has it been a benefit? To what individual has it ever proved an injury?" He hoped that every "speculative scruple would prove a private blessing."¹

Only a few days after the President so warmly advocated internal-improvements, Senator VanBuren, of New York, introduced the following in the Senate:

Resolved, That Congress does not possess the power to make roads and canals within the respective states.

Resolved, That a select committee be appointed with instructions to prepare and report a joint resolution for an amendment of the constitution prescribing and defining the power Congress shall have over the subject of internal-improvements, and subjecting the same to such restrictions as shall effectually protect the sovereignty of the respective states, and secure to them a just distribution of the benefits resulting from all appropriations made for that purpose.

These resolutions he supported with a speech; but the Senate did not take favorable action.*

The question of greatest interest touching internal-improvements during Adams's administration was that of jurisdiction over the Cumberland Road. It arose on a bill for the preservation and repair of the road east of the Ohio.

March 27, 1826, Mr. Stewart, of Pennsylvania, chairman of the House Committee on Roads and Canals, reported that the committee had examined the road and found it in a "state of rapid dilapidation." The committee reported a bill similar to the one passed in 1822 and vetoed by President Monroe. This brought up the vexed question of jurisdiction once more. The committee said that the power *to construct*

¹ *Messages and Papers of the Presidents*, Vol. II, pp. 2981-89.

**Congressional Debates*, Vol. II, Part I, p. 20 (1825-26).

the road, which had been asserted and exercised, carried with it as a necessary incident the right to *preserve* it. The right to *create* and the right to *preserve* must stand or fall together.¹ The matter was allowed to rest with the report of the committee.

A proposition for the United States to exercise jurisdiction over the road was always followed by a counter-proposition to cede it. In the Senate, January 23, 1828, Senator Macon, of North Carolina, introduced a resolution instructing the committee of the judiciary to inquire into the expediency of relinquishing to the states through which the Cumberland Road passed to the Ohio River whatever claims, if any, the United States had to the same. This was agreed to, but the committee did not report.²

The road was fast going to destruction, in spite of the appropriations Congress was making for repairs east of the Ohio. Profiting by the experience of the states east of the Ohio River, the state legislature of Ohio on February 11, 1828, passed a law for the protection of the road against injuries; and providing for the punishment of destructive acts within her borders. Pennsylvania did likewise. Appropriations for repairs had been made as follows: 1823, \$25,000; 1827, \$30,000. This sum was wholly inadequate, as the states had stood jealously by their supposed rights guarding the right of eminent domain, and not passing laws for the protection of the road against injury. But to see this improvement crumble as soon as it was finished gave some of them pause. This is illustrated in the acts of Ohio.³ Moreover, Pennsylvania went farther and passed the following resolution February 25, 1828:

That the government of the United States be and the same is hereby authorized to erect toll-gates on that portion of the Cumberland Road which is within the limits of this commonwealth, enforce the collection of tolls, and generally to do and perform any and every other act and thing which may be deemed necessary to insure the permanent repair and preservation of said road. Provided, that no higher tolls be imposed or exacted than may be sufficient for the purpose aforesaid, and that the amount of such tolls shall be applied exclusively to the repairs of the said road within the state of Pennsylvania.⁴

President Adams in transmitting this resolution to Congress recommended "an adequate provision for the permanent preservation and repair of that great National Work."

¹ *Congressional Debates*, Vol. IV, Part I, pp. 125-27 (1827-28).

² *Reports of Committees*, Vol. III, No. 143, 19th Cong., 1st Sess. (March 27, 1827).

³ *Senate Documents*, Vol. XII, No. 120 (February 25, 1828). ⁴ *State Papers*, Vol. IV, p. 152.

On May 1, 1828, Senator Benton, of Missouri, introduced the following resolution :

That no right of soil or of jurisdiction over the ground on which the Cumberland Road runs, was acquired by the United States by the acts of Maryland, Pennsylvania, and Virginia granting their consent to the making of said road. That it is not expedient for the United States to exercise a permanent superintending care over the repairs and preservation of the Roads made by it within the limits of the different states.

That the repair and preservation of the Cumberland Road, and of all other roads made or to be made under the authority of the United States be left to the states through which the same pass.¹

Smith, of Maryland, objected that these resolutions were vague and abstract, and would settle nothing. As it was late in the session, it would be better to proceed to a consideration of the bill to authorize toll-gates. Benton replied that the resolutions were not abstract, and they would settle a vexed question which had been before Congress for seven years, viz., fixing the authority which was to be charged with the care, repair, and preservation of this road. In regard to the bill for gates in 1822, Benton said that no constitutional barriers, objections of inconvenience, or inexpediency rose to impede or arrest its progress. The bill had floated through Congress on the swelling tide of an overwhelming majority, but was rightly vetoed by Monroe on constitutional grounds. The provisions of this "gate bill" in his opinion were a limitation of state sovereignty. He said: (1) The right of jurisdiction over the soil could be acquired by the United States only through cession from the states; and then, only over forts, magazines, arsenals, dockyards, and other needful buildings, and for a seat of government for the Union. (2) The act of Pennsylvania, Virginia, and Maryland in granting their consent to the construction of the Cumberland Road did not, in point of fact, and could not, in point of constitutional power, confer upon the government of the United States any right of soil or of jurisdiction. (3) The road was made upon contract by the United States and for hire; therefore it was no more the property of the United States than a pair of boots made to order, paid for, and delivered is the property of the maker; title to another's property could not be acquired by making an improvement upon it; if such a contention were granted, the states would be reduced to the same political condition as the District of Columbia. (4) The jurisdictions claimed by the United States over roads made by it must be either concurrent or exclusive; the first would subject the people to a double set of con-

¹*Congressional Debates*, Vol. IV, Part I, p. 717 (1827-28).

tradictory laws and penalties, and the second would completely oust the states. (5) If the "gate bill" were passed, every person who opposed the collection of toll, or quarreled with the gatekeeper, might be seized by the federal marshal and tried in the federal district court, and finally in the Supreme Court at Washington; or it would subject any person who happened to get into an affray with a drunken gatekeeper to be hanged like a dog for high treason, for this would be levying war against the United States. Mr. Benton claimed that the United States, after constructing the road with the consent of the states, had no property interest in it to cede, surrender, or relinquish. He offered these resolutions as a friend of internal-improvements, desiring an interpretation of the question whether the individual states should be charged with the business of repairing and preserving this road. The Senate was not ready to answer the question and tabled the resolutions.¹

January 14, 1828, Mr. Buchanan offered as an amendment to the bill, known as the "gate bill," the proposition that the road should be ceded to the states through which it passed,² on condition that the states should erect toll-gates; but the matter went over for a year, when he defended his proposition in a lengthy speech. He thought the passage of the "gate bill" would strike a blow at the federal Constitution in its native purity. Pass this bill giving Congress the power to erect toll-gates, and interference in the domestic concerns of the states and the barriers between the United States and the states would be torn down. This road was made by the United States as a mere proprietor; it proceeded as any corporation or private individual would have done; the state of Pennsylvania even annexed a condition on location with which the United States complied;³ the United States exercised the right of eminent domain only by virtue of state law; and this established the fact that the United States could appropriate and construct without exercising jurisdiction. But the passage of this bill would change the United States from proprietor to sovereign; it would be gaining admission within the states as a friend and then holding possession as a sovereign. The right to demand toll, he said, was a sovereign power; it included (1) the stoppage of a passenger until the toll was paid; (2) his trial and punishment, if he should either by force or by fraud evade, or attempt to evade, its payment; (3) a discretionary power as to the amount of the toll; (4) the trial and punishment of persons who might wilfully injure the road or violate the police regu-

¹ *Congressional Debates*, Vol. IV, Part I, pp. 717-23 (1827-28).

³ See p. 22.

² *Ibid.*, p. 1004 (1827-28).

lations established for it. If passengers were compelled to pay toll, this meant the government levying the toll should protect them; for to vest the power to collect toll in one sovereign and the protection of the traveler in another would be almost an absurdity. Another absurdity was the idea that the United States could exercise jurisdiction over the road as an incident of the power to appropriate and construct. Mr. Vance, of Ohio, called Buchanan's attention to the fact that the Pennsylvania legislature had passed an act at its last session *giving the United States power to erect toll-gates.*¹ Mr. Buchanan said he had the utmost respect for the legislature of his native state; but he had been informed that the act was passed out of a strong desire for the preservation of the road, and without debate, the constitutional question not being considered. Moreover, the people of Pennsylvania had not given their legislature power to cede jurisdiction over roads to the United States. It could cede jurisdiction over sites only for forts, etc. If it could do otherwise, it would be possible for the legislature to cede the entire state and thus destroy the Union. He believed in a wholesome jealousy of federal power; and asked all those who believed in protecting the rights of the states to vote against the "gate bill."²

Mr. Strong, of New York, thought the proposition to erect toll-gates was merely a question of property; granted that the United States as a proprietor had a proprietary interest, she had the right to protect and preserve it. He regretted Mr. Buchanan's mention of state rights, and said the Union was weaker than the states; if it ever failed, it would be because of state action.³ Mr. Strong thought the amendment of Buchanan to cede the road on condition that Pennsylvania and the other states would erect toll-gates involved an inconsistency and an impairment of state sovereignty, even according to Buchanan's reasoning. According to Buchanan, the United States had no power to erect toll-gates; but he would impose this as a condition on the states. The power to erect toll-gates was either in the United States or in the states; if the United States did not possess it, the state did; therefore a binding condition on the part of the United States was an impairment of the sovereignty of the state. Mr. Strong said the United States had a property interest in this road which she did not have in other mail-roads.⁴ Mr. Barbour, of Virginia, traced the history of the attempt to appropriate for, and construct, internal-improvements, and found that the opinion of one House of Representatives and two

¹ See p. 79.

² *Congressional Debates*, Vol. V, pp. 240-44 (1828-29).

³ *Ibid.*, pp. 247-50.

⁴ *Ibid.*

Presidents was opposed to the power to construct, which of course involved also the power to erect toll-gates. He said the advocates of this "gate bill" derived the power from two sources: (1) the Constitution; (2) the compact between the United States and Ohio. Under the first, Mr. Barbour said the power to lay a toll was the power to tax, and by the Constitution there were two limitations: (1) direct taxes must be apportioned; (2) other taxes must be uniform. The toll as a tax did not attempt to apportion according to population, and it was not uniform unless levied on all the roads in the United States. Under the compact theory the United States was under obligation to appropriate so much money for a road, and to construct it with the consent of the states through which it passed; but how could a stipulation which impaired an *obligation* confer a *power*? He said the states did not surrender soil and jurisdiction. A compact between Ohio and the United States, plus consent for right of way on the part of the states of Maryland, Pennsylvania, and Virginia, granted no power to Congress to exercise jurisdiction. The giving of a new power which it had not before is amending the Constitution. This could be done only by three-fourths of the states. Mr. Barbour would amend Mr. Buchanan's amendment to read "that we *cede* all right which we *claim* to have, and not all the right which we *may have*." He would also attach no condition as to the erecting of toll-gates, but make an absolute surrender.¹ Mr. Fort answered affirmatively these questions: (1) Has the government of the United States power to construct roads within the states? (2) Has it power to levy tolls on the roads thus constructed? (3) Is it expedient to exercise the power in the present case? In the course of his speech he denied the following: (1) that the federal government is a compact among the governments of the states; (2) that its powers are derived from the state governments; (3) that it *properly exists* only within the ten miles square comprising the District of Columbia; (4) that the sovereignty of each state over its soil is paramount and exclusive. In reply to the statement that a toll was a tax, and could not be apportioned according to population or made uniform, he said it was sufficient if equal to every person who *used the thing taxed*.² Mr. Anderson, of Pennsylvania, would not impose tolls on the road until it ceased to be really national and became a mere local road. He said the legislatures of the states had not indicated that they wanted a property interest in the road. Pennsylvania had by its resolution intimated to the contrary. Why undertake to force the road upon the states?³

¹ *Congressional Debates*, Vol. V, pp. 250-54.

² *Ibid.*, pp. 266-70.

³ *Ibid.*, p. 275.

Mr. Stewart, of Pennsylvania, said his colleague Buchanan regarded this bill with more alarm than did the South the tariff. He had called it a "specter." He said there was only one step for Buchanan to take to land him within the ranks of the state-rights party, and that was to declare the tariff unconstitutional. Perhaps he would do so at the next session. This would entitle him to full communion. He said the act of 1825 in regard to post-offices imposed many penalties, not only on the Cumberland Road, but on all roads. This bill imposed light penalties for destroying a national improvement that had already cost \$2,000,000.¹ Mr. Smith, of Indiana, said the amendment assumed more for the federal government than the bill itself. He said the amendment proposed (1) to put the road in repair; (2) to cede it to states in which it lay, upon condition that states accept the same, with the restrictions annexed that they should never collect more toll than would be necessary to keep it in repair. This assumed (1) that Congress had power to take the materials necessary for the repair, and enter upon and repair it; (2) that the road when repaired was the property of the United States; (3) that Congress could constitutionally cede the property of the United States in the road to the several states; (4) that it had the power to impose restrictions on the legislation of the states on the subject. He said:

We cannot repair this Road unless we can constitutionally use the means; we cannot cede it unless it is our property; we cannot impose restrictions on the legislation of the states in relation to this Road unless the Road is subject to our jurisdiction and control.²

Bell, of Tennessee, and Mitchell, of South Carolina, both made strong speeches against the bill and internal-improvements generally, charging that such improvements were for the benefit of the non-slaveholding states.³

Buchanan's amendment to cede the road was lost by a vote of 77 to 113. The bill was ordered to be engrossed, and passed the House by a vote of 105 to 91. Without debate, by a vote of 35 to 6, the Senate struck out the provisions for the erection of toll-gates. The House concurred on March 3, 1829; and an appropriation of \$100,000 was made for repairs.

The fight for jurisdiction was defeated, and Monroe's method of appropriating for improvements of national importance triumphed. It was confidently believed that Adams stood ready to approve a bill applying the doctrine of the implied powers; but a change had come

¹ *Congressional Debates*, Vol. V, pp. 275-82.

² *Ibid.*, pp. 283-90.

³ *Ibid.*, p. 74.

over Congress, especially the Senate, and the President had no opportunity to pass on the constitutionality of such a bill. Adams's messages to Congress review at great length the work of the Board of Engineers provided for in the act of 1824. It was during his administration on July 4, 1828, that the Chesapeake and Ohio Canal was opened. In his oration on this occasion the President said the steps in accomplishing the destiny of our country were, first, the Declaration of Independence; second, the formation of the Constitution; third, the opening of means of communication binding the East and the West together. During his administration there was great activity in internal-improvements. The United States appropriated money and subscribed for stocks in many canal companies. The secretary of the treasury voted the shares and collected the dividends for the United States.

The following sums were expended on rivers and harbors: 1824, \$40,000;¹ 1825, \$83,000;² and the last year of Adams's administration, \$189,000.³ From 1824 to 1828 the roads planned and partly constructed by the United States amounted to 1914 miles; and the expenditures on internal-improvements from October, 1827 to July, 1828, amounted to \$1,135,168.⁴

2. *Surrender of the Cumberland Road to the States through which it Passed.*—President Jackson did not discuss internal-improvements in his inaugural address; but in his first annual message said that the public debt would soon be paid; that the tariff had been adjusted in such a manner that a surplus would be available, which he thought should be distributed among the states, on the basis of population, for internal-improvements. If Congress did not deem such a plan constitutional, an amendment should be adopted.⁵

Congress did not adopt the President's suggestion. Instead a bill was passed requiring the federal government to subscribe \$150,000 of stock in the Maysville turnpike. In 1796 the government gave aid to Zane to cut a trace from Zanesville, Ohio, to Limestone (Maysville), Ky. This route was extended through Kentucky and Tennessee, and it was hoped to continue it to New Orleans. Statesmen of the South traveled on this trace to Zanesville where it intersected the Cumberland Road. The bill in question provided only for macadamizing a link of this road, from Maysville to Lexington, Ky. It really was a southern offshoot of the Cumberland Road, and in the debates an effort was made to show that it was a national improvement, as this

¹ *United States Statutes at Large*, Vol. IV, p. 38.

² *Ibid.*, p. 175.

³ *Ibid.*, p. 363.

⁴ *State Papers*, Vol. I, No. 7, 20th Cong., 2d Sess.

⁵ *Messages and Papers of the Presidents*, Vol. II, p. 451.

was the test after Monroe's veto in 1822. The President vetoed the bill on the ground that, as the road was short and wholly within one state, it was local and not national in character. This was the first veto applying Monroe's doctrine to a concrete case. On the general question of internal-improvements, he said that an amendment to the Constitution was necessary, if Congress wished the power of jurisdiction as well as the power of appropriation. This, in his opinion, was well illustrated in the history of the Cumberland Road.¹

The debate in the House on the proposition to pass the bill over the veto was largely personal and tumultuous rather than constitutional. Stanberry, of Ohio, charged that the veto was the work of the "ministry;" in fact, of the "great magician" (Van Buren). This was stoutly denied by Polk, of Tennessee, and Barbour, of Virginia. The vote on passing the bill over the veto was 96 to 90; and it failed for lack of the constitutional majority.² The President was clearly opposed to federal jurisdiction over internal-improvements, but favored appropriations for national improvements.

There was another phase to the President's objections. A common practice was for the United States to subscribe for stock of various internal-improvement companies and vote the stock. This practice was viewed with disfavor by the President. In his second annual message he said:

All improvements effected by the funds of the Nation for general use should be open to the enjoyment of all our fellow citizens, exempt from the payment of tolls or any imposition of any character. The practice of thus mingling the concerns of the Government with those of the states or of individuals, is inconsistent with the object of its institution and highly impolitic. A different practice, if allowed to progress, would ultimately change the character of this Government by consolidating into one the General and State Governments, which were intended to be kept forever distinct. The power which the General Government would acquire within the several states by becoming the principal stockholder in corporations, controlling every canal and each sixty or one hundred miles of every important road and giving a proportional vote in all their elections, is almost inconceivable and in my view dangerous to the liberty of the people.³

How did the President's general attitude affect the Cumberland Road? He was clearly opposed to tolls for repairs, as such a policy included national jurisdiction; also to anything that looked like national administration or jurisdiction in subscribing for and voting

¹ *Messages and Papers of the Presidents*, Vol. II, p. 483.

² *Congressional Debates*, Vol. VI, Part II, pp. 1140-48.

³ *Messages and Papers of the Presidents*, Vol. II, pp. 509, 510.

shares in private companies in the states. On the constructive side, he was in favor of appropriating for national, not local, improvements; he also favored an amendment to clarify the situation; and finally he had a personal program, viz., to distribute the surplus among the states and let them undertake their own internal-improvements. On the question of extending the Cumberland Road westward, he might be expected to favor appropriations; perhaps by implication he might be expected to favor appropriations for the repairs on the road east of the Ohio; but the last two propositions were counter to his pet scheme of distribution.

The President's attitude was all-important, as no bill could be passed over his veto. Annual appropriations for the repair of the road were being made; but this method could not continue indefinitely, inasmuch as tolls could not be levied by the United States for repairs. Because of the lack of jurisdiction, a resort to state control, with the consent of Congress, became an absolute necessity.

The first state to take action in this matter was Ohio. February 17, 1831, Mr. Burnet laid before the Senate a letter from the Governor of Ohio which stated that the Ohio legislature had passed an act providing for the preservation and repair of the Cumberland Road within the state, and asking the assent of Congress to the same. The provisions of the act were as follows:

Sec. 1. The governor of Ohio was authorized, with the consent of Congress, to take charge of such part of the road within the state as was finished, or such parts as should be progressively finished, and erect toll-houses and collect tolls; but the toll-gates were not to exceed one for every twenty miles.

Secs. 2-4 provided for the collection of toll and regulated the rates, and closed with the following:

No toll shall be received or collected for the passage of any stage or coach conveying the United States mails, or horse bearing the same, or any wagon or carriage laden with the property of the United States, or any cavalry or other troops, arms or military stores, belonging to the same, or to any of the states comprising this Union, or any person or persons on duty in the military service of the United States, or of the militia of any of the states.

The remaining sections regulated the policing of the road in detail, and provided that the general assembly might at future sessions change, alter, or amend the act without the consent of Congress, provided the tolls collected were necessary for the preservation of the road according to the true intent of the act.¹

¹ *Congressional Debates*, Vol. VII, *Appendix*, pp. 62-65 (1830-31).

Senator Burnet, of Ohio, said it was generally believed in Ohio that the jurisdiction over the road was in Congress, and that Ohio could not act without the consent of Congress. Mr. Hayne, of South Carolina, said he was in favor of giving the consent, but urged a complete cession of the road, to the end that the United States might be rid of the question. Senator Poindexter, of Mississippi, was in favor of a complete cession. He had two objections to giving assent to the law of Ohio: (1) the United States was undertaking to transfer to the legislature of Ohio the right to erect toll-gates and exercise jurisdiction when it did not possess the right itself; (2) the justices of the peace in Ohio were to have jurisdiction over offenses against the road. This was unconstitutional, as the judicial power was vested in one supreme court and such inferior courts as Congress might create. The United States, he said, had no authority to constitute state justices of the peace as federal officers. It was replied that it was the state of Ohio that empowered the justices of the peace to act, and not the United States; that some claimed the jurisdiction was in the United States, while others claimed it was in the state; this was simply a method of preventing a collision without settling the question. Hendricks, of Indiana, said many were opposed to an absolute cession of the road to the states, but some measures should be taken to preserve it from ruin.

The bill giving the consent of Congress passed the Senate by a vote of 29 to 7.¹

In the House the principal objection to the bill was that the tolls would be paid largely by persons from outside of Ohio, as most of the exemptions from tolls were for inhabitants of Ohio. The bill passed by a vote of 89 to 60, and became a law March 2, 1831.²

February 7, 1832, Virginia passed an act almost identical with that of Ohio. March 2, 1833, Congress declared its assent; but in doing so provided that the assent was to remain in force during the pleasure of Congress; also

that this act shall not be construed as preventing the United States from resuming whatever jurisdiction it may now have over the said road, whenever, in its discretion, it shall deem it proper to do so.³

April 4, 1831, Pennsylvania passed an act for the preservation of the Cumberland Road. Maryland did likewise January 23, 1832. These acts were not approved by Congress until July 3, 1832. The consent was to remain in force only during the pleasure of Congress.⁴ The

¹ *Congressional Debates*, Vol. VII, pp. 209, 287 (1830-31).

² *Ibid.*, p. 208 (1830-31).

³ *Appendix to Congressional Debates*, Vol. IX, Part II, p. 23.

⁴ *Ibid.*, Vol. VIII, Part III, p. 21 (1831-32).

road in these two states was in bad condition; hence they stipulated that it should not be finally received until placed in good repair and toll-gates erected by the United States. These conditions were met by large appropriations from the United States treasury, but only after the patience of Congress was exhausted. The road was accepted by these two states in 1835. The acts of Pennsylvania and Maryland were identical, differing slightly from the Ohio and Virginia acts in regard to exemption from tolls. The act in this particular was:

that no toll shall be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States or to any of the states composing the Union.

These differences are of importance, and will be discussed in another connection.

In 1820 an appropriation was made for the survey of the road west of the Ohio; in 1825 an appropriation was made for construction; from 1830 to 1838 the appropriations were divided among Ohio, Indiana, and Illinois, thus breaking the continuity of the road. This was done at the urgent demand of Indiana and Illinois. The sums appropriated were large up to 1830. The last regular appropriation was made in 1838. The personal attitude of the president, the hard times, state-rights doctrines which reached their height during Jackson's administration, the railroads, the fact that the road was already surrendered east of the Ohio and in part of Ohio, together with factious opposition, account for the cessation of congressional activity and support during the thirties. The last subject mentioned, factious opposition, no doubt accounts for Clay's defection. February 26, 1838, Mr. Clay, in the Senate, showed clearly that he would no longer support the Cumberland Road because of Jackson's veto of the Maysville Turnpike bill. He said that internal improvements had been suspended by the veto of the present administration—an administration supported by the senators that were then clamoring for an appropriation for the Cumberland Road. He declared that Kentucky and Tennessee had received less benefit from the expenditure of public funds than any other states; yet when it was proposed to extend the Cumberland Road to Maysville, Lexington, and Nashville, the bill was vetoed; further, the western states could not claim an appropriation for the road on the basis of the compacts, as the "2 per cent. fund" had been exhausted a thousand times over.¹

¹ *Appendix to Congressional Debates*, Vol. XII, Part I, p. 616 (1835-36).

Tipton, Hendricks, and many others claimed that the federal government was bound by "compacts" with Indiana, Illinois, and Missouri to build the road to Jefferson City, Mo. They claimed that the fund pledged for the construction of the Cumberland Road would eventually amount to \$7,000,000, and that it would be a breach of faith not to complete the road to the extreme western states, as their funds had been used on the road in Ohio. There was a general disposition to regard the "compact" as binding; therefore the road might have been completed, had it not been for the quarrel on location in Ohio and at the Mississippi River.

The general obligation of the United States *to complete* the road was urged repeatedly by the western states. The citizens of Ohio urged by memorial the binding nature of the compact, the special object of which was to show that the United States was under obligation to complete the road to Ohio by the erection of a bridge over the Ohio River at Wheeling. The argument was stated as follows: By the act of 1802 the United States was bound by compact to construct a road "*to the state [Ohio];*" but the act of 1806 fell short, as it said "*to the Ohio River*" instead of "*to the state.*" The act of 1820 and 1825 said from "*Wheeling to the Mississippi River.*" The memorialists pointed out that, beginning with 1806, the acts provided for no bridge over the Ohio at Wheeling; that the want of a bridge was an intolerable grievance, and the failure to construct it was a violation of the "compact" of 1802 which called for a road "*to the Ohio, to the state of Ohio and through the same.*" The bridge was not built by the United States.

The obligation of the United States to complete the road came up again in the House, April 19, 1838. Mr. Cushing said the acts on the Cumberland Road belonged to the land system of the United States; that the general tenor of the acts from 1802 to 1820 was of such a character as to bind the United States to complete the road. He said the acts called for a road "*to Ohio,*" "*to Indiana,*" "*to Illinois,*" "*to Missouri,*" and "*to Jefferson City.*" He further stated that there were higher obligations than those of "compact," namely, the territorial and social development of the West.¹ Mr. Corwin, of Ohio, said that the states had exempted the lands of the United States from taxation for five years when there was not much but land to tax. This tax he estimated at \$6,000,000; while 650 miles of road, at \$6,000 a mile—the original estimate—amounted to only \$3,900,000. The additional cost of the

¹ *Appendix to Congressional Debates*, 25th Cong., 2d Sess., p. 523.

road he charged to bad management in construction and poor judgment on the part of Congress as to time of appropriation.¹

A Senate committee made a report on completing the Cumberland Road, February 10, 1840. The committee answered the following questions: (1) Is the Cumberland Road a national work and entitled to the favorable consideration of the general government? (2) Is the general government bound in good faith, under the "compacts" with the states of Ohio, Indiana, Illinois, and Missouri, to complete the road? Seeking to answer the first question, the committee reminded the Senate of the early separation of the East and the West by the mountains and of the general lack of any means of communication between these sections except by means of the circuitous pathways of the Indians. At the time of the acquisition of lands of the West the treasury was exhausted, and these lands made the United States government the great land proprietor of the West. The policy of the United States was to replenish her treasury and pay the Revolutionary War debt by fostering the settlement of these wild lands. All the Presidents from Washington down had held the same large view in regard to national improvements.

None denied the proprietary right to construct roads *to* and *through* the public domain, and few doubted the power to construct those strictly National in character, as the Cumberland Road was viewed by all.

The road had been viewed as a great military, commercial, postal, national thoroughfare. The secretary of war (Calhoun) in 1824 was quoted as thinking the road strictly national. This was surely conclusive, for it came from a state-rights man. Jackson had approved appropriations for the road even after he had vetoed the Maysville road bill. All these facts, taken together, proved, in the opinion of the committee, that the Cumberland Road was a national work.

Answering the second question, the committee traced the ordinance of 1787, and the development of the public domain until Ohio was admitted and the compact was made to build a road from the "2 per cent. fund" to and *through* Ohio, then Indiana, Illinois, and to Missouri, and through it to Jefferson City. The committee then asked the question: Did the United States bind herself to make a road leading *to* and *through* these states, or to expend 2 per cent. of land sales *toward* that object? If the first, she was bound to make the road, whether the reservation was sufficient or not. If the latter, she became a trustee to the states for the amount, and was reponsible only for the

¹ *Appendix to Congressional Debates*, 25th Cong., 2d Sess., p. 533.

judicious expenditure of the reservation. The general understanding was that the general government was to complete the road *to* and *through* the states named in the compacts. Such was her interest, enlightened counsels and facility for settling the lands of the West. The United States owed a debt "to those who periled their lives and braved the hardships and sufferings incident to the settlement of the new country." Attention was called to the fact that the compact did not provide for a *grant to the states* of 2 per cent., but a *reservation* by the general government for a road running *to* and *through* the states. Three per cent. was granted to the states, subject to their own discretion; while the 2 per cent. was reserved independent of the states except as to right of way. In the one case the general government retained the funds and the power to appropriate it to just such work as it thought proper; in the other, it parted with both funds and power. The committee did not think the states would have consented to have the United States expend the entire 5 per cent. at her own discretion. The committee said the lands in states subject to the compact amounted to 123,000,000 acres. The tax on this for five years would equal \$5,000,000. Counting 650 miles to St. Louis, at Gallatin's estimate of \$6,000 a mile, the road would cost a total of \$3,900,000. This estimate had proved too low; but even if the United States had laid out the road on too grand a scale, it was not the fault of the states, as they were entitled to the road under the "compact," whether the 2 per cent. proved sufficient or not.

Considering the general government merely as a trustee, under no obligation to finish the road, after expending the 2 per cent. fund, the committee proved that the United States had not lived up to its compact, as she had decreased the land fund as follows: (1) by passing laws making grants of land to individuals and companies; (2) by reducing the price of land; (3) by paying military services in land; (4) by a system of pre-emptions; (5) by making small and untimely appropriations; (6) by injudicious expenditure and administration.

In reply to the statement that the national character and public utility of the road ceased when it reached Wheeling on the Ohio, the committee said the travel, mails, armies, and munitions of war that crossed to the westward of the mountains must make large use of this road, as the Ohio River was frozen over the greater part of the winter, and was too low for navigation a portion of the summer and autumn. The committee concluded that in point of national importance and utility the road had no rival of its kind, and that every consideration

of national propriety, expediency, and faith, as pledged in the solemn compacts, required its speedy completion. The committee recommended appropriations according to the estimates of the secretary of war.¹ It was on this report that J. C. Calhoun made his last great speech on internal improvements.² With the growth of his extreme state-rights theories his attitude had changed. On April 1, 1840, he addressed the Senate, saying that the United States, after a trial of a quarter of a century, was wholly unfit to carry on internal-improvements; that it would be poor policy to incur a debt for the completion of the road, and to pledge the "2 per cent. fund" as if there were some magic in this fund if only pledged. He further stated that the road had cost \$18,000 a mile, while Georgia then was constructing a railroad at \$15,000 a mile; that the United States up to 1833 had expended \$10,000,000 for internal improvements, of which sum Georgia had received, \$17,000, South Carolina, Kentucky and Virginia nothing, while Tennessee's part was only \$27,000. He thought that other states had secured large sums for internal-improvements by importunity and political intrigue, and that this system of "internal bleeding should stop."³ Webster spoke favoring internal-improvements in general; but the bill failed.

Again in 1841 a Senate committee reported on the obligation of the United States to finish the road. Various acts of Congress were examined. The road was located and constructed by Congress, with consent of the states, as a great national, commercial, military, and mail route; also as an aid to emigrants in reaching the West, thereby enhancing the value of the public domain. The contracting parties were (1) the federal government; (2) the states through which the road was located; (3) and the citizens that had relinquished land and materials. Each of these parties, according to the committee, stood bound to the other, to observe the same good faith that should exist between individual citizens. The states and citizens had done their part, the United States should do its part. An unfavorable vote was the answer, Clay claiming that the compact was fulfilled and the United States under no obligations to contract a debt of \$7,000,000 to complete the road.⁴ Some expedients were tried to secure the completion of the road. April 1, 1836, the Ohio legislature prayed that the annual appropriations might be turned over to the state board of public works. The

¹ *Senate Documents*, Vol. IV, No. 160, 26th Cong., 1st Sess. (February 10, 1840). This is an able report.

² For his early attitude see p. 51.

³ *Calhoun's Works*, Vol. III, p. 483.

⁴ *Senate Documents*, Vol. IV, No. 197, 26th Cong., 2d Sess. (February 17, 1841).

House Committee on Roads and Canals approved the plan; but it was not adopted.¹ Estimates were reported to the House on the proposition to supplant the macadam system with a railroad which from Columbus, Ohio, to Vandalia, Ill., could be constructed with double track and repaired for less a year than it would cost to complete the Cumberland Road on the old plan. This proposition seems to have been defeated on the ground that a railroad was a monopoly and not so democratic as a wagon road; railroads might do for the wealthy of the East, but the people of the West were democratic republicans, plain men, who wanted no toll, no monopoly, nothing exclusive; who wanted a real people's road.² Much was said in Congress about continuing the Cumberland Road because of the "compacts" with the states and the agreement to expend the "2 per cent. fund." The facts in regard to the land sales and expenditures were as follows: The "2 per cent. fund" for the four states of Ohio, Indiana, Illinois, and Missouri was \$972,978.20. There was expended on the road: east of the Ohio River, for construction \$1,657,325.20, for repairs \$1,126,686.82; in Ohio, \$1,943,461.95; Indiana, \$985,000; Illinois, \$596,000; for survey of the road from Wheeling to the Mississippi River, \$10,265.85; total expenditures, \$6,318,739.82. The difference between the total expenditure and the "2 per cent. fund" was \$5,345,761.62.³ Still the three western states clamored for the completion of the road on the ground that their funds were expended on a part of the road too far east.

The large appropriations of 1838 were practically expended by 1840, when the property of the United States used in construction was being sold, and the proceeds applied to the final work of the road preparatory to deserting it; even the little steamer "Terre Haute," used for transportation of materials on the Wabash, foundered on the way to Cincinnati to be sold. The situation for the road was desperate. In spite of the hard times, the deplorable condition of the federal treasury, and the general suspension of internal-improvements, the advocates of the Cumberland Road made desperate efforts to have the road completed to Jefferson City, Mo., in compliance with the "compacts" and preceding acts of Congress. January 30, 1839, the Senate, by resolution called on the secretary of war for an estimate of the sum necessary to complete the road. January 27, 1840, the report was made as follows: in Ohio, \$638,166.25; in Indiana, \$3,144,250.21; in Illinois \$2,448,-

¹ *Reports of Committees*, Vol. III, No. 67^a (May 17, 1836).

² *Congressional Debates*, Vol. XII, Part IV, p. 4495 (1835-36).

³ *Executive Documents*, Vol. X, No. 350, 25th Cong., 2d Sess.

838.52; in Missouri, \$1,664,740.45; total \$7,896,046.44.¹ The enormous sum needed to complete the road prevented Congress from fulfilling what many thought a solemn obligation resulting from the various "compacts."

December 24, 1841, the Indiana legislature memorialized Congress for the completion of the road. The memorial recited that the road was commenced in Indiana in 1830. No appropriations had been made since 1838; Indiana and the great western states asked only a pittance of the millions expended on the seaboard and on the increase of the navy; the people of the West did not complain of eastern appropriations, but if their prayers for the continuation of the road should again be disregarded, they would have just ground for complaint against Congress and the executive. In regard to extravagance on the road in Indiana and Illinois, it was pointed out that the heaviest expenditures had been made during times of speculation, when labor and material were high.²

The spirit in Illinois was set forth in a letter from James Whitlock to Senator Young, of Illinois. He said:

The feelings of those interested in the Road have been so much exasperated at the delay of Congress in providing means to complete it that it was with difficulty they could be restrained from requesting the delegates to vote against *all* appropriations till Congress shall do us justice. The opinion which universally prevails here is, that there should be a union and concert of action between the delegations of the four states to effect their object by going in a body against the favorite measures of the opponents of the Road till they could be induced to listen to reason.³

A public meeting of citizens of Bond County was held, and a memorial sent to Congress, March 15, 1844. It was pointed out that seventeen states and territories were directly interested in the completion of the Cumberland Road; that \$9,000,000 had been given to strengthen the navy for the benefit of eastern commerce; and it closed as follows:

Your memorialists are not prepared to say that, unless they receive justice at the hands of the General Government, the Union will be in danger, for they believe no such consequence is to be apprehended; but they should view a large appropriation for the Cumberland Road as an "act of just and beneficent legislation."⁴

¹ *Senate Documents*, Vol. III, No. 122, 26th Cong., 1st Sess.

² *Ibid.*, Vol. II, p. 32, 27th Cong., 2d Sess.

³ *Ibid.*, Vol. IV, No. 314, 27th Cong., 2d Sess., (February 4, 1842).

⁴ *Ibid.*, Vol. IV, No. 216, 28th Cong., 1st Sess., (November 13, 1844).

Again in June, 1844, the belligerent attitude of Illinois was manifested when one of her representatives in Congress said in the House that the Cumberland Road was not a part of "the American system," but of the land system. He said the road had been completed through the states of Maryland, Pennsylvania, and Virginia—states that had furnished no funds. If the government did not complete the road through states furnishing the funds, it was a "Jew." He said that nineteen-twentieths of the federal money was spent east of the mountains on the navy, beacons, buoys, etc. The West would not long endure such rank injustice, but as soon as it had the numerical strength in the House, it would see that justice was done. But Congress was not to be moved by such threats.¹

In 1846 there was an attempt to pass a bill in the House to surrender the road completely in Ohio, Indiana, Illinois, and Missouri, and grant lands as follows, if the states would finish the road: to Ohio, 344,000 acres; Indiana, 921,000; Illinois, 1,389,360; Missouri, 1,331,832. If the road was not completed in eight years, the land should be forfeited. The general tenor of the debate was to the effect that the original "compact" was binding; but the bill failed.² Some said they wished never to hear the words "Cumberland Road" pronounced in the House again. But the following, together with the strict-construction theory, generally determined the matter:

Why, sir, men are behind the times with this old-fashioned road. The spirit of the age is "onward!" Thirty miles an hour on land and one thousand miles a minute on Professor Morse's wires are deemed but ordinary speed.³

Influenced by a strong desire to preserve and complete the road, the Indiana legislature passed a resolution March 31, 1848, solemnly charging the United States with failure to complete its contract, and praying that the eastern part of the road in the state of Indiana might be transferred together with materials, tools, etc., to the state, that it might authorize a private company to finish it. Then, grasping at a vain hope, the resolution closed:

Provided, however, that the United States may resume the ownership and control of said Road at any time by paying to the corporations the cost of constructing the same.⁴

Congress, glad to be entirely rid of the question, passed the following act, August 11, 1848:

¹ *Appendix to Congressional Globe*, Vol. XIII, p. 611, 28th Cong., 1st Sess.

² *Congressional Globe*, Vol. XV (1845-46.).

³ *Ibid.*, Vol. XVI, p. 422.

⁴ *Senate Miscellaneous Documents*, Vol. I, No. 111, 30th Cong., 1st Sess.

So much of the Cumberland Road as lies within the state of Indiana and all interests of the United States in the same, together with all the timber, stone, and other materials used in the construction of the same, and all the rights and privileges of every kind belonging to the United States as connected with said road, be and the same are hereby transferred and surrendered to the said state of Indiana.¹

March 3, 1845, Illinois passed an act which provided for punishing acts of injury against the road, applying the same penalties as were applied to similar acts against state or private roads in the state. The county commissioners of the state through which the road passed were given supervisory control over what was not under the control of some officer of the United States.² May 9, 1856, Congress passed an act for Illinois exactly similar to that for Indiana.³

March 27, 1877, Ohio asked permission of Congress to make the road free on a vote of the various counties through which it passed⁴ in the state. Maryland did likewise.⁵ January 30, 1879, this consent was granted to Maryland, and on February 26, 1879, to Ohio; but fearful that there was something lurking in the background, a kind of Banquo's ghost, there was added:

Provided, that this consent shall have no effect in respect of creating or recognizing any duty or liability whatever on the part of the United States.⁶

The surrender of the road to the states was but the concrete expression of the great democratic wave which swept over the United States during the thirties and forties. Every state admitted, beginning with Ohio, had entered into a compact with the United States by which the latter reserved 2 per cent. of land sales for the construction of a road to the state. In 1836, when Arkansas entered the Union, she was given the entire 5 per cent. to expend to suit herself, and in 1841 the 2 per cent. reservation for Alabama and Mississippi was surrendered to those states.

A few points should be noticed in connection with the surrender of the road. Reasons have already been given for this surrender. The main ones were (1) a lack of jurisdictional power in the United States to levy tolls and police the road; (2) a desire on the part of both the states and the United States to preserve the road from destruction. The acts surrendering the road east of the Ohio declared the consent

¹ *U. S. Statutes at Large*, Vol. IX, p. 283.

² *Illinois Compilation of Laws*, Vol. I, pp. 418, 419 (1856).

³ *U. S. Statutes at Large*, Vol. XI, p. 7.

⁵ *Laws of Maryland*, 1788, chap. 158, p. 256.

⁴ *Laws of Ohio*, 1877, p. 62.

⁶ *U. S. Statutes at Large*, Vol. XX, pp. 277 and 322.

given only "during the pleasure of Congress." No time is mentioned in the Ohio act of 1831, but in 1879 the United States disclaimed all obligations in the future; in Indiana and Illinois the surrender was complete and unconditional. In the original acts of surrender, 1831-35, there was a recognition of either a proprietary or a jurisdictional interest, or both, in the United States as follows: (1) something was surrendered; (2) surrender was made by "compacts" which regulated the number of toll-gates and the rates of toll; (3) provision was made for the United States to resume its proprietary or jurisdictional interest at pleasure.

3. *The federal Supreme Court and the surrender of the Cumberland Road.*—At the January term, 1844, the Supreme Court rendered an important decision on the "compact" by which the state of Pennsylvania took charge of the road. The case is *Searight vs. Stokes*.¹ The point involved was whether Pennsylvania could levy a toll on wagons carrying the United States mails and not violate the compact.

Chief Justice Taney delivered the decision of the court. He gave a short history of the construction of the road and the reasons for its surrender to the states. The Ohio exemption for the United States was as follows:

That no toll shall be received or collected for the passage of any stage or coach conveying the United States mails, or horses bearing the same, or any wagon or carriage laden with the property of the United States, or any cavalry or other troops, arms, or military stores belonging to the same, or to any of the states comprising this Union, or any person or persons on duty in the military service of the United States or of the militia of the states.*

The act of Ohio did not require the United States to repair the road or erect toll-gates. Virginia passed an act exactly similar to the one passed by Ohio.² The road was in a deplorable condition in Pennsylvania and Maryland. These states stipulated that the road should first be put in good condition before the states would receive it.³ Congress hesitated about doing this, but finally⁴ agreed to the terms and appropriated \$150,000 for repairs. This sum proved inadequate, and in 1834 an additional appropriation of \$300,000 was made; but because of the bad condition of the road, and the exacting terms imposed by the Pennsylvania and Maryland legislatures, another appropriation of

¹ 15 Curtis 346.

² Act passed February 4, 1831; approved by United States March 2, 1831.

³ February 7, 1832; approved July 3, 1833.

⁴ Pennsylvania, April 4, 1831; Maryland, January, 1832.

⁵ July 3, 1832—over a year after Pennsylvania's act.

\$346,188.58 was made in 1835. But Congress, in sheer desperation and disgust, stipulated that no part of this last appropriation should be expended until the respective states accepted the road; also that the United States "should not thereafter be subject to any expense in relation to the road." On these terms Maryland and Pennsylvania accepted the road in 1835, with an identical provision in regard to exemption, which is slightly different from the ones in the Ohio and Virginia acts. It was as follows:

That no toll shall be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States or to any of the states comprising this Union.

The rates for tolls were carefully specified. The state might, however, change them without the consent of Congress, but they should never be higher than was necessary to provide for the preservation of the road, and the state should not so modify the act as to destroy its true intent and meaning.

But June 13, 1836, Pennsylvania passed a law declaring that carriages carrying the property of the United States, which were exempted in 1831 from payment of tolls, should thereafter be exempted only in proportion to the amount of property in the carriage belonging to the United States, and

that in all cases of wagons, carriages, stages, or other modes of conveyance, carrying the United States mail, with passengers or goods, such wagons, stages, or other mode of conveyance shall pay half-toll on such modes of conveyance.

It was the validity of this part that was called in question. One would naturally expect some discussion of the constitutionality of internal-improvements in this opinion; but Taney said that the constitutionality of the general government's power to construct the road was not involved in the case; nor the rights of the United States in the road previous to the compacts of the surrender. He said that the object of the compacts was the preservation of the road; that the right of the several states to enter into a compact would hardly be questioned by anyone, nor could the power of Congress be questioned.

The Constitution gives it [the federal government] the power to establish post-offices and post-roads; and charged, as it thus is with the transportation of the mails, it would hardly have performed its duty to the country, if it now suffered this important line of communication to fall into utter ruin . . . when by the immediate payment of an equivalent, it obtained *in perpetuity*

the means of performing efficiently a great public duty, which the Constitution had imposed upon the General Government.

He pointed out that the exemption of carriages carrying the mail in the original Pennsylvania act was not so clearly and specifically provided for, as in the Ohio act; but that in the act of 1835 Pennsylvania agreed that thereafter the United States was to be subject to no further expense in relation to the road; and no one could doubt that this toll, although in form paid by the contractors, in fact was paid by the Post-Office Department, as the contractors would add it to their bids. In this case the United States was not free from expense in relation to the road, according to the compact upon which it was surrendered to and accepted by the states. In the opinion of the court, the omission of the words "stages for carrying the mails" made not the slightest difference, as the United States had unquestionably a *property interest* in the mails; nor did "laden" mean "fully laden;" but the United States was not entitled to exemption for more carriages than were absolutely necessary, in the opinion of the postmaster-general, for the safe conveyance of the mail. Further, Taney stated that the exemption of carriages bearing the mail was no exemption of other property in the same carriage, nor of any person traveling in it unless in the service of the United States. If the state had made the road itself, and not entered into any compact upon the subject with the United States, she might undoubtedly have erected toll-gates thereon, and have charged tolls on the mails if the United States adopted it as a post-road. All the rights which the United States was supposed to have had been surrendered to the state, and the power of the latter was as extensive as if the road had been made by herself, except in so far as she was restricted by the compact. The Pennsylvania act in 1836 imposing a toll on carriages carrying the United States mail over that part of the road within the state was declared to be in conflict with the compact between the state and the United States arising from the act of March 3, 1835, under which the state took possession of the road.

Here, then, are some important points: (1) the United States, by the "compact" with Ohio and the consent of Pennsylvania, had an original interest in the Cumberland Road, which it surrendered to Pennsylvania, and which under another "compact" guaranteed her a right in perpetuity to certain exemptions as to tolls and further expenses in repair of the road; (2) the right to enter into such compacts was declared legal; (3) the United States was declared to have a property interest in the mails; (4) other persons and property in a

mail carriage might be required to pay toll; (5) there was an implication that the United States might enter on an internal-improvement policy at least by way of "compact" to carry out a great power, viz., the power "to establish post-offices and post-roads and provide for the carrying of the mails."

There were two dissents. Justice McLean inquired into what was ceded to Pennsylvania. He answered:

All the right of the United States which was not reserved by the compact of cession. This right might be supposed to arise from the compact with Ohio, the consent of Pennsylvania to the construction of the Road, and the Federal expense of its construction, including the sums paid to individuals for the right of way and materials. These and whatever jurisdiction over the Road, if any, exercised by the United States were surrendered to Pennsylvania. The Road, then, must be considered as much within the jurisdiction and control of Pennsylvania, excepting the rights reserved in the compact, as if it had been constructed by the funds of that state.

Examining the compact arising from the Pennsylvania act of 1831, he did not find "mail coaches" mentioned, and mail could not be included under the term "property." In regard to the compact arising from the act of 1835, that the United States was to be to no further expense for repair, and that a toll on mail coaches did impose an additional expense, he said this did not follow, as the toll was to be paid by the contractor and not by the United States, and what the United States had to pay in tolls was for *use* of the road and not for *repairs*.

In Justice Daniels's dissent there is a consideration of the constitutional competency of the United States to enter upon a system of internal-improvements. He declared the case, although in form a contest between individuals, in reality was a contest between the government of the United States and the government of Pennsylvania. He denied that the government of the United States in the exercise of any or all of its powers had the constitutional power to construct roads or enter upon a system of internal-improvements within the states; he affirmed that the soil of the several states appertained to them by a title paramount to the Constitution, and could not be granted to the United States except for seat of government, forts, etc., and this power could only be modified by an amendment; that the power of Congress to establish post-roads conferred no right to construct them; and in transporting the mails over these designated roads the United States government was on the same footing as others that might use the roads. In accordance with these principles, he did not

perceive how the federal government had acquired any power over the Cumberland Road by making appropriations, or by expending money for its construction or repair, even though these appropriations had been made with the consent, and even solicitation, of Pennsylvania. He thought the federal government could not erect toll-gates, nor could it constitutionally and legally demand of the state of Pennsylvania the regulation of toll either as to the imposition of particular rates or the exemption of any kind of transportation upon the road. This power was in Pennsylvania exclusively. But the United States might enter into contracts with companies, individuals, and communities for the transportation of the mails, hence a contract with the state of Pennsylvania on this matter would be valid. The Pennsylvania act of 1831 was examined. He admitted that the United States had some property interest in the mails, but only such as was vested by law in all common carriers. This was not the meaning of the term "property," as used in the act of 1831, as the two phrases "property of the United States" and "property of the states" were linked together, and the states had no mails to be transported, hence the mail of the United States was excluded. He thought the Pennsylvania act of 1836 levying the half-tolls was constitutional, and that the state had really exercised only half of its constitutional power.

At the same term the court was called on to decide a case from Ohio touching the "compact" arising from the surrender of the road in that state. The case is *Neil vs. State of Ohio*.¹ Chief Justice Taney again delivered the opinion of the court. The Ohio act of 1831 exempted "any coach conveying the United States mails" from tolls. In 1838 the board of public works, by the authority of the state legislature, levied a toll of ten cents a passenger at each toll-gate on persons in mail stages, but did not charge toll on persons traveling in other carriages. Taney said the object of surrendering the road in 1831 was to free the United States from all expense relative to the repair of the road. He granted that the toll was not levied directly on the mail carriages; but, by levying it only on persons traveling in mail coaches, the state accomplished indirectly what could not be done directly; for bids for carrying the mail would be increased by so much; and the United States would be burdened with the expense of repairs. The act levying toll in this manner was declared contrary to the compact between the state of Ohio and the United States under which the state took the road.

¹ 15 CURTIS, 616.

Justice Daniels again dissented on the ground that the object of the act of 1831 was to provide for the preservation of the road; that exempting passengers traveling in mail stages would create a monopoly in the hands of owners of stages carrying the United States mails, driving all others from the road; and that this practically defeated the objects of the act of 1831—tolls for repair.

In 1851 the Supreme Court decided the case of *Achison vs. Huddleson*¹—a case that came up from Maryland. In 1842 Maryland passed a law levying a toll of four cents on each passenger traveling by mail coach, and requiring the proprietor of every mail coach to pay \$1 at each toll-gate, if the number of passengers was not reported by him. This act was declared in conflict with the compact by which Maryland took the road, as the United States was to be to no expense for repairs.

¹ 19 CURTIS, 140.

VIII. CONCLUSION.

There remains the task of briefly summarizing the results of this research. The aim from the first has been to exhibit the causal relations of the subject in such a way that conclusions should be evident in the use made of the material. However, a few words may help in re-emphasizing the main points.

1. The beginnings of the subject, or the fundamental phase of transportation, began when this country was still in the colonial period. The first crude attempts at colonial co-operation in internal-improvements have been discussed. The water courses used by the colonists in the early days were gradually supplemented by post-roads and military routes opened to the West as phases of expansion. To these was added the Wilderness Road, constructed by private initiative and slight state aid from Virginia and Kentucky. These roads proving inadequate, a resort was made to the federal government for aid.

2. The resort to the federal government revealed the constitutional incompetency of Congress to appropriate directly for internal-improvements. In the Constitutional Convention an ineffectual effort had been made to include the power over internal-improvements, to the end that the states might be brought into closer touch with each other, and the western country be bound to the eastern. The method adopted, as shown by the debates in the convention, was to allow the states by means of tonnage duties to raise an internal-improvement fund with the consent of Congress. This plan worked fairly well until the admission of the western states, which could levy no tonnage duties for internal-improvements, when a resort was made to a "compact" between the United States and the states, to set aside the "2 per cent. fund" for the Cumberland Road in return for a five-year exemption of federal lands from state taxation. This is the fiction that solved the constitutional difficulty. Herein is the *quid pro quo* or the genesis of the federal internal-improvement plan; but not the internal-improvement plan of the later so-called "American system."

The special "2 per cent. fund" was reserved by the United States to be expended by the United States on a road connecting the eastern and western waters. The original intention seems to have been to construct only such a road as the fund would justify, and to do this

after the fund had accumulated; but the commercial and political isolation of the East and the West threatened separation. This fear led to the policy of making "loans" or "advances" from the federal treasury, and pledging the "fund" for their reimbursement. The excess of "advances" over the "fund" amounted at the surrender of the road to something over five million dollars.

3. The practical administration of the road gave full play to national, state, and private cupidity, especially in Pennsylvania, Ohio, and Illinois. The right of the United States to exercise eminent domain was acknowledged for the most part to be wanting; hence in every instance this right was exercised through state laws and by means of state officers. In 1818 there was an attempt to depart from this principle of state sovereignty. The Illinois resolution of 1834 on this point stopped the extension of the road. All acts of the federal government during the period 1806-56 correspond with the policy pursued with reference to the Cumberland Road.

The general supervision and administration of the road were from first to last in the hands of the President, who acted through the secretary of the treasury at first, and finally through the secretary of war.

4. At the beginning of the nineteenth century there was little debate on the constitutionality of internal-improvements. It was generally admitted that Congress did not have the power; hence the resort to compact. But with the greater demand for internal-improvements and the pressing need of preserving the Cumberland Road came the great constitutional battle on "compacts" and "implied powers." This battle enlisted the polemic and forensic ability of the greatest statesmen and jurists of the day. During the early period the prominent names were Washington, Wilson, Gouverneur Morris, Franklin, Madison, and Jefferson; during the great middle period of contention, Jefferson, Gallatin, Madison, Calhoun, Clay, Pickering, Lowndes, and Monroe; during the period of decentralization, decline, and surrender, Monroe, John Quincy Adams, Clay, Webster, Calhoun, McDuffie, Hayne, Jackson, Van Buren, Benton, Buchanan, Barbour, Bell, Polk, Hendricks, Harrison, and Chief Justice Taney. To the question of the Cumberland Road these men gave their most anxious thought. The reports, debates, vetoes, and legal decisions embrace in their comprehensive scope the most fundamental concepts back of our federal or dual system of government, from the verbal quibble over the obligation of the United States to complete the road, to an examination of the location of sovereignty.

5. The question of the Cumberland Road clearly led to the following results: (a) the extension of Presidential power; (b) a concrete issue for the development of the doctrine of the implied powers; (c) the veto of Monroe which stated the constitutional power of Congress *to appropriate for improvements of a national character*; (d) the beginning of the river and harbor appropriations, with all their advantages and disadvantages; (e) the formation of the internal-improvement board of engineers which has carried the federal surveyor into every locality; (f) the establishment of the circulating fund; (g) the distribution of the surplus among the states; (h) the policy of giving land to the states on their admission to the Union; (i) and, finally, the grants of land to states for canals and railroads.

6. The Cumberland Road never became a great military thoroughfare, as its greatest use was for the transportation of the mails. With its radiating or connecting lines, it formed a vast system of commercial arteries, the importance of which can hardly be weighed or overestimated. In the early and palmy days of the road there came a class of hardy pioneers that blazed the way for an expanding civilization, and made it commercially and politically possible for the eastern and western sections of the North to stand and act together in the Civil War, which opened as the last curtain was lowered on the drama of the Cumberland Road.

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Slight use has been made of the decisions of the Supreme Court of the United States; also the statutes of the states through which the Cumberland Road passed. The footnotes show that the government reports have been used almost exclusively.

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